Mr. Berry:

If the Court please, I think I am about done with what I want to ask Mr. Shaw at this time. I think if we do succeed in getting Mr. Exselsen I may have some additional questions; at this time I would like to ask Mr. Shaw just one question, for the record.

By Mr. Berry:

Q. Mr. Shaw, when was the Defendants' Exhibit 55 prepared?

A. To the best of my recollection, in the last two or perhaps three months of 1936.

Mr. Berry:

I think that's all.

Cross Examination (Continued).

By Mr. Walton:

Q. Mr. Shaw, I wish you would look at the Defendants' Exhibit No. 55, the fourth column from the right hand side, being the column headed "Proceeds from back taxes applied to purchase of bonds", and then at the column immediately to the right of that which is headed "Bond purchase Price", and then the column immediately to the right of that headed "Par value of bonds purchased"; I wish you would explain those three columns as to what they were intended to represent at the time this tabulation was prepared.

A. At the time this schedule was made the City was contemplating and it was still proposed to the City the so-called "XYZ" Corporation deal which I think I have described earlier in my testimony. That deal contemplated the sale of the certificates which were then delinquent and in the hands of the City for I believe a total of a Million Dollars, and under that assumption the Commis-

sion's thought was—Mr. Exselsen's thought was that we would use half of that for the retirement of debt and half for other purposes which were known to be neces sary to the City, the re-paving of its streets and the rehabilitation of its assets generally; as I have previously covered in testimony, the XYZ deal was not realized, and became in turn the first Coral Gables Development Company deal which I think provided for a price of $575,000.00 for the certificates, and later turned into the existing Coral Gables Development Company proposition of some $400,000.00, but this schedule was built upon that, to my own mind then, extravagant thought of a Million Dollars for those assets.

Q. Well, how and in what way does the anticipated Million Dollars for the assets enter into those particular columns that I have referred to?

A. That is the background for the assumption that we were going to use half of it for the purchase of bonds, the half of it being represented in the fourth column from the right, "proceeds from back taxes applied to purchase of bonds".

Q. Now, those figures in that fourth column from the right, are they not the figures which appear in Section 12 of Ordinance No. 269?

A. I believe they are. They appear to be (making comparison).

Q. Have you compared them, sir?

A. Not for a good many—not for several years, but they are from a glance approximately those figures.

Q. Well, I wish, for the purposes of the record, that you would compare the figures appearing in the first paragraph of Section 12 of Ordinance No. 269, and state whether or not they are the same.

A. (After making comparison.) Yes, sir.

Q. They are the same?

A. They are.

Q. Coming to the first column on Defendants' Exhibit 55, which is headed "Year", the first figure in it is "½". What half year did that represent?

A. That represented the half year from January 1, 1937, to and including June 30, 1937, in which, although the bonds were issued, it was impossible to put on the levies which were provided for them. That half year was treated in the light of a sort of an interim year, and was provided for as shown by those figures across there from existing levies.

Q. In other words, the second column from the left in Defendants' Exhibit 55, gives the actual period of time covered by the yearly figures shown in the first column; is that correct?

A. That's correct.

Q. Coming back again to the fourth column from the right on Defendants' Exhibit 55, does that not show that during the period of time beginning July 1, 1938 and ending June 30, 1939, the City anticipated expending $45,000.00 cash in the purchase of bonds?

A. That is correct, sir. We at that time expected to get our money from the sale of these certificates over a period of time. This XYZ arrangement, so-called, and the first Coral Gables Development Company arrangement, called for an escrow and for withdrawals from that escrow periodically, and this was based on using the funds that became available to us under the arrangement.

Q. And doesn't that third column from the right on Defendants' Exhibit 55 show that during the period of time mentioned the City expected to apply that $45,000.00 in cash to the purchase of bonds in the open market at an estimated purchase price of 75¢ on the Dollar?

A. The schedule so shows.

Q. And does not the second column from the right show that during that same period of time the City ex-

pected by the application of the $45,000.00 in cash to the purchase of bonds on the open market at 75¢ on the Dollar to retire $60,000.00 par value of bonds?

A. That is correct, sir. And I might add further that the City's plan and desire was to retire as much of its debt as possible from the proceeds of delinquent taxes, and had we realized the Million Dollars that was then anticipated by some, we would probably have retired even more than is shown on this schedule.

Q. When did that XYZ deal that you refer to finally fall through?

A. Sometime in the spring of 1937, I would say.

Q. 1937?

A. That is right.

Q. I believe Ordinance No. 269 was adopted December 23, 1936? Was it not?

A. That is correct.

Q. So that Ordinance No. 269 was adopted before the XYZ deal had fallen through?

A. That was adopted while the XYZ deal was still a possibility. The XYZ deal was never anything but a proposal, and a very tentative assumption by certain people, and I can't name positively who those people are because I don't know; a tentative statement that they would back the deal; there was never any actual contract.

Q. Isn't it true, however, that Ordinance No. 269 was adopted in anticipation and expectation of that deal being carried out?

A. That deal was hoped to be in the offing at the time, yes, sir.

Q. And isn't it true, also, that Section 12 of Ordinance No. 269 was drafted for the purpose of carrying out the anticipated arrangement shown on Defendants' Exhibit No. 55 for the application of cash to the retirement of bonds at their market value?

A. Not having drafted that section, I am not sure; I couldn't tell you, I'm sure.

Q. And you are familiar with the terms of Section 12 of Ordinance No. 269, are you not, sir?

A. Yes, sir.

Q. Returning to Defendants' Exhibit 55, does it not also show that during the period of time which began July 1, 1939, and ended June 30, 1940, the City anticipated applying $48,000.00 in cash to the purchase of bonds in the open market at a price of 80¢ on the Dollar, and through that means the retirement of $60,000.00 par value of bonds?

A. That is correct, Mr. Walton, and with the differences as to amount and bond purchase price, is also correct as to the remaining years covered in that schedule.

Mr. Walton:

The Defendants' Exhibit No. 28 has been revised by Mr. Shaw so as to incorporate additional information, and the Defendants now ask leave to substitute the revised exhibit for the original Exhibit No. 28.

The Master:

The motion is granted.

(Thereupon, there being no objection, the said instrument was marked in evidence as Defendants' Substitute Exhibit No. 28, the original Defendants' Exhibit No. 28 being therewith withdrawn from the record upon agreement of all counsel and the Master).

Mr. Walton:

That's all.

(Witness excused).

Mr. Berry:

If the Court please, I think that is all that we can proceed with in that way this afternoon. We want, of course to get Mr. Exselsen's testimony, and that may open up something else. We may not even want to ask any further questions. We may not even want to take his testimony. He is under order to be here, and is not, and that's the best we can say up to this time. We are still within our time. Mr. Gibson will be here tomorrow, and whether he will have anything to suggest, I don't know. The only other thing we have at this time is consents, and we can proceed to make our objections to certain of them at this time. What we have here, and where we made objection before, because the record was not complete, and that was completed by this Petitioner's Exhibit 52 which we have here, I think it would shorten it, and we would perhaps have to take it up exhibit by exhibit, but there are two general classes of objections that will be made, and I might illustrate what I want here very readily by one of these documents.

(Discussion had. off the record).

Mr. Berry:

If Your Honor please, I will now proceed to put my objections in the record. The objecting creditors object to the consent of George Bradley, Numbered 64, on the ground that there is no certified copy of the letters testamentary as provided by the Acts for the admission of evidence, but merely a certificate by the Clerk of the Surrogate Court of Allegheny, New York, that a will was admitted to probate and that the two signers of the consent were duly appointed executors; the certificate shows that they are still acting as such executors.

The Master:

The objection is overruled.

Mr. Berry:

Objection is made to the consent filed on behalf of Elmer H. Bright, No. 70, on the ground that this is accompanied only by a statement of the Register of the Probate Court of Middlesex, Massachusetts, that the last will and testament of the said Bright was duly proved and allowed, and Horace O. Bright and Alexander H. Bright were appointed executors, and that said letters of administration are now in force. We make the same objection to that as we did to the former document.

The Master:

Objection overruled.

Mr. Berry:

We object to Consent No. 80, filed by May S. M. Brown, on the same ground, that there is a mere statement of the Clerk of the Surrogate's Court and no certified copies.

The Master:

Objection overruled.

Mr. Berry:

The same objection is made to the consent on behalf of Burton F. Blough, Claim Numbered 97, which is a certificate regarding the letters testamentary and not a certified copy. The certificate shows the letters are still in full force.

The Master:

The same ruling; objection overruled.

Mr. Berry:

Regarding the consent filed on behalf of the Estate of Joseph L. Becu, which seems to be filed by a Trustee under the will, there is attached a certified copy of the

will, but there is not attached to it the qualification—the appointment of an executor or the qualification of the trustee named under the will, and we object to that on the ground that there is no showing as to that. That number is No. 111.

The Master:

The objection is overruled.

Mr. Walton:

To save time here, I will alternate with Mr. Berry on some of these things, if that's agreeable.

The Master:

All right.

Mr. Berry:

The next is Consent No. 132, filed on behalf of the Miners' State Bank of Minersville, Pennsylvania, apparently filed by a liquidating trustee, James J. Curran. There is attached in support of that a printed plan of reorganization in which a man, whose name I can't read, but it looks like Albert Foran, signs as liquidating agent, who certifies that this is a true and correct copy of a Special Plan of Liquidation. Also attached is a final decree, In Re: Miners' State Bank, in the Court of Common Pleas of Schuylkill County; this is signed by a notary public and not by an officer of the Court. There is also a Petition in the same Court for the approval of a Trustee, including an order of the Court that is certified by a notary signing himself as "prothonogary", but not by any officer of the Court, and we object to that on the ground it is not properly admissible in evidence.

The Master:

Mr. Adams, can you throw any light on this? The consent is signed by Albert Foran, as agent for these three other named persons, but it doesn't appear as to his authority to so act.

Mr. Adams:
I guess that objection is good.

The Master:
The objection is sustained.

Mr. Walton:
Consent No. 146 is shown on the list I have as having been filed by Detroit Trust Company, and is objected to on the ground that the documents submitted in support of the authority of the purported consentor to consent merely show the qualification and issuance of letters to two Trustees under a will, and there is no copy of the will attached, and no showing that as Trustees under the will they have authority to consent to any composition in bankruptcy.

The Master:
Objection overruled.

Mr. Berry:
Consent No. 148, filed on behalf of the Estate of John T. Dismukes, which is filed by two individuals out of the three named as executors and trustees under the will, is objected to; there is a certified copy of the will naming the two parties, two of the executors and trustees, granting them the authority as such to bargain, sell, grant and dispose of his lands, tenements and properties, but no general authority to enter into a consent of this kind, nor is there a copy of the letters testamentary appended showing appointment of the executors or the trustees. This will was filed in Florida, however. That's objected to on the absence of the letters testamentary, the appointment of the trustee and qualification, and also the lack of authority.

The Master:

I think that will pass for prima facie proof, and the objection is overruled.

Mr. Walton:

Consent No. 169 is objected to on the ground that the documents submitted as evidencing the authority of a person to sign the consent is merely an explanation of why he signed without authority.

The Master:

Unless you can think of something as to that, if the statement is correct, the objection is sustained.

Mr. Adams:

That's all right; we won't argue about that.

The Master:

I sustain the objection to that.

Mr. Berry:

Consent No. 180-A, filed on behalf of the Estate of Alfred J. Bromley, is objected to as there is no certified copy of the letters testamentary, but a statement by Clerk of the Surrogate's Court that the parties filing the consent were named as Trustees of the Trust created in and by the will, and that such letters are unrevoked of record. This also includes a certified copy of the will of Mr. Bromley, and it is objected to as not being properly in evidence, and that the authority to consent is not expressly given by the will.

The Master:

That objection is overruled.

Mr. Berry:

Consent No. 200, filed on behalf of the Estate of Robert P. Gay, is objected to as this is a statement of the Register of the Court of the County of Middlesex, Massachusetts, of the appointment of Substitute Trustees under the will of Robert P. Gay, and no certified copy of the appointment but merely a statement to which is attached a copy of a will of the said Gay, which is not in any way certified or identified other than by being attached thereto, and we object on the ground that that is not the proper method of proof, and there is no authority shown in these Trustees to take the action which they are taking in filing this consent.

The Master:

The objection is overruled.

Mr. Walton:

Consent No. 214 is objected to on the ground that it purports to have been filed by an agent, I believe in his own name, without any showing of the principal or principals on whose behalf he purports to act, and the document submitted in support of it is merely a copy or purported copy of a contract on which the agent certifies that it is a true copy of the original contract, and that the contract has been in effect continuously since December 31, 1935, but there is no affidavit of any kind that this is a copy of the contract, nor is there any verification other than the unsupported certificate of the purported agent.

The Master:

What do you have to say, Mr. Adams?

Mr. Adams:

We won't argue it, if the Court please.

The Master:

I think that objection is well taken; objection sustained.

Mr. Berry:

Consent No. 218, filed on behalf of the Estate of John Gorman, is objected to; the proof is supported by certified copies of letters testamentary issued to Lydia Gorman and Clarence J. Gorman, and the copies mention a will, and there is no copy of the will, and no showing that the executors named have authority to file a consent such as this.

The Master:

I will overrule that objection.

Mr. Walton:

Consent No. 224 is objected to on the ground that it purports to be given by an executor, and the documents submitted as evidencing his authority consist, first, of a certificate by the Clerk of the Circuit Court of Sussex County, Virginia, showing that H. A. Gray, Jr., duly qualified as the executor of the Estate of Horace A. Gray, deceased, and given bond as such according to law, there being no statement in the certificate that he is now executor or continues to act as executor; and the second document submitted in support of the consent being a letter from an attorney in Waverly, Virginia, in which he states that the executor is acting and has not been discharged; but, there is no copy of the will, no copy of the letters testamentary, and no certificate of any official under the seal of any Court showing that the executor continues as such, or that he has authority to consent to a composition.

The Master:

I will overrule the objection.

Mr. Berry:

Consent No. 228, filed on behalf of Olivia Miller Brillo, by an agent, Phillip R. VanDuyne, is objected to. This is supported merely by a photostatic copy, which is uncertified to in any way, which purports to be a photostatic copy of a power-of-attorney acknowledged before a Vice-Consul of the United States, at Paris, France. This power-of-attorney is limited to selling and disposing of any personal property in the United States, assigning, transferring and selling certificates of stock and executing assignments, releases or discharges of mortgages, and to give proper receipts, releases and acquittances for any money, claims, or demands due me, but nothing about compromising, adjusting or anything else, and it is not certified to, and it is not admissible in evidence in that form.

The Master:

I'll pass that up to Mr. Adams.

Mr. Adams:

I think the objection is probably good to this proof.

The Master:

It seems so to me; objection sustained.

Mr. Walton:

Consent No. 230, filed on behalf of the Receiver of the Guardian-Detroit Union Group, Incorporated, is objected to on the ground that the document submitted in support of the consent consists of a certified copy of a decree of dissolution and an order appointing a permanent receiver, and that the decree confers on the receiver the usual powers of an equity receiver, with permission to apply to the Court for additional instructions as and when necessary, and that the usual powers of an equity receiver do not include the compromise or composition of a debt

due the corporation in the absence of a specific authorization of the Court, there being here no showing of any specific authorization of the Court.

The Master:
Objection overruled.

Mr. Berry:
Consent No. 248, filed under the last will and testament of Chauncey J. V. Pettibone by one of two Trustees is supported by a photostatic copy, or what purports to be a photostatic copy of the appointment by the District Court of the Fourth Judicial District of Minnesota which is certified to by an Assistant Secretary of the Continental-Illinois National Bank & Trust Company of Chicago, apparently in Chicago, Illinois, a different state; we object to this on the ground that the instrument itself is not properly certified to to be in evidence, and there is no showing that the man who does certify has compared it with the original and knows anything about it.

The Master:
The objection is sustained.

Mr. Walton:
Consents Nos. 276 and 277 are objected to on the ground that they are filed by an executor, and the documents submitted in support of them consist merely of a certified copy of the letters testamentary, but there is no certified copy of the will, nor is there any showing that the will confers on the executor any right to compromise or consent to a composition of the indebtedness of the decedent.

The Master:
Objection overruled.

Mr. Berry:

We object to the consent No. 278 filed by Louise B. Johnson, executrix of the Fred E. Johnson Estate on the ground that there is a mere certificate that she was appointed executrix of that estate which states she is still acting, but no copy of the will, but it is stating that he had a last will and testament without anything in reference to the powers.

The Master:

The objection is overruled.

Mr. Berry:

Consent No. 279 is objected to, as it purports to be the claim of Louise B. Johnson, who signs on behalf of the Estate of Grace P. Johnson, and the certificate of her right to file the claim is the same as in Consent No. 278 just mentioned, so we object to it on the same grounds.

The Master:

Objection overruled.

Mr. Walton:

Consent No. 289 is objected to on the ground that the documents submitted in support of it consist merely of a certified copy of the last will and testament, together with a certificate to the effect that letters of Trusteeship issued to Hiram A. Kendall and are still in effect, but there is no certified or exemplified copy of the letters of Trusteeship.

The Master:

Objection overruled.

Mr. Berry:

Consent No. 358, filed on behalf of H. P. McIntosh, Sr. Trust, is supported by what purports to be a copy of an

order entered in the Court of Common Pleas of Cuyahoga County, Ohio; this decree is not in any way certified to or identified so that it may be filed in evidence, and we object to it.

The Master:
Objection sustained.

Mr. Walton:
Consent No. 387-A is objected to on the ground that the only document submitted in support of it consists of a certificate by the Clerk of the Surrogate's Court of Queens County, New York, that letters testamentary issued August 1, 1938, on the Estate of John Morrison to Gertrude L. Morrison, and have not been revoked, but there is no certified copy of the letters testamentary, nor is there any certified copy of the will on which they were issued; neither is there any certificate or statement that the will was ever admitted to probate, nor is there any showing of authority either under the will or under order of the Court to compromise any debt or consent to a composition of any debt.

The Master:
Objection overruled.

Mr. Berry:
Consent No. 404, filed on behalf of the Estate of R. Adlington Newman is objected to; this is supported by certified copies of letters testamentary to two executors, which seems to be in proper form, showing that the letters are still in effect, but there is no showing what the will is or the authority of the executors to act, and the objection is based on that ground.

The Master:
Objection overruled.

Mr. Walton:

Consent No. 475 is objected to on the same grounds stated in objecting to Consent No. 387-A, except in this instance the certificate is made by the Register for the Probate of Wills and Granting of Letters of Administration for Lehigh County, Pennsylvania.

The Master:

Objection overruled.

Mr. Berry:

Next is Consent No. 479, in the Estate of Lindsay Hopkins, Deceased. This is objected to on the ground that the certified copies of the letters are filed herewith but no showing that the administrator has the authority to execute this consent.

The Master:

Objection overruled.

Mr. Walton:

Consent No. 507-A is objected to on the ground that the only document submitted in support of it is a certificate that letters testamentary issued May 14, 1934, to Anna A. Sparrow on the will of Jacob A. Sparrow, and have not been revoked.

The Master:

Objection overruled.

Mr. Berry:

We object to Consent No. 511 filed by the general guardian of the person and estate of Frank A. Augsbury, Jr., which is supported by a statement from the Clerk of the Surrogate's Court in St. Lawrence County, New York, that the St. Lawrence County National Bank of Canton

was duly appointed such general guardian. There is no showing that the general guardian was in any way authorized to compromise any claim or execute any consent such as is required here; and for the support of that, we submit that the duties of a guardian are as a rule purely statutory, and they cannot act in a case of this kind without Court authority, and unless they show that there is such Court authority, or that the laws of New York are different.

The Master:
Objection sustained.

Mr. Walton:
Consent No. 513 is objected to on the ground that it purports to have been given by a corporate executor, which can act only through its corporate seal, and no such seal is affixed to it, and on the further ground that the only document submitted in support of the consent is executor is authorized to compromise, compound or consent to the composition of a debt.

The Master:
Objection overruled.

Mr. Berry:
We object to the consent No. 518, filed on behalf of the Estate of Clement W. Gill by two trustees. Supporting this is a certified copy of the appointment of these two Trustees on the 31st day of December, 1931, and there is no showing that the appointment is still in full force and effect, or has not been revoked, or settled, and in the body of the appointment it requires the trustees to take possession of the property of the deceased and to make

a report within thirty days, and to make annual statements thereafter until the trust is fulfilled, and there is no showing that this trust is in existence at this time.

The Master:
Objection overruled.

Mr. Walton:
Consent No. 540 is objected to on the grounds that the only document submitted in support of it consists of a certified copy of letters testamentary issued April 7, 1932, to Helen Frances Valentine on the Estate of Charles A. Valentine, and a certificate dated May 1, 1941, that the letters testamentary remain in full force, there being no certified copy of the will, and no showing that the executor had any authority either under the will or under any order of the Court to compromise, compound or consent to the composition of a debt.

The Master:
Objection overruled.

Mr. Berry:
We object to Consent No 551, filed on behalf of the Trust Estate of Harold Weber, Deceased. There is a certificate signed by the Deputy Clerk of the Probate Court of Lucas County, Ohio, on behalf of the Judge and Ex-Officio Clerk of that County that Mattie S. Weber was appointed Trustee of the Trust Estate of Harold Weber, deceased, and that such trust is in full force and effect at this time; that the instrument does not purport to be a certified copy of the appointment, nor does it in any way state what the trust estate consists of or that the bonds and TPCs listed in the proof of claim are part of the trust

estate of Harold Weber, deceased, and we object to it on that ground.

The Master:
Objection overruled.

Mr. Walton:
Consent No. 567 is objected to on the ground that it is made by an individual who describes himself as attorney-in-fact for the Company, and the only document submitted in support of it is a letter written by one Walter H. Wylie, in which he says that he is a co-partner in the firm of Wylie & Company, and that D. J. Ware was authorized to sign the consent for Wylie & Company, as its attorney-in-fact, there being no affidavit or oath of any kind, and the power-of-attorney not being produced or shown.

The Master:
Objection sustained.

Mr. Berry:
That's all the objections, if Your Honor please.

Mr. Adams:
Now then, I take it that Petitioner's Exhibit 52,—group exhibit is admitted, subject to the foregoing rulings on the items connected with it. We re-offer Petitioner's Exhibit No. 52, being a group exhibit, subject to the foregoing rulings of the Master on the particular items contained therein.

Mr. Berry:
We object to it further on the ground it comes too late, being offered in support of claims that should have been filed completely at a date heretofore fixed for filing in

this cause without any extension of time, and therefore object to all the claims in Group Exhibit 52.

The Master:
The exhibit is admitted; objections overruled.

(Thereupon, said group of instruments identified as the Consents filed in this cause, was admitted and marked in evidence as Petitioner's Exhibit No. 52.)

Mr. Walton:
At this time defendants tender in evidence a copy of Ordinance No. 265 of the City of Coral Gables, adopted October 13, 1936, and ask that it be marked in evidence as Defendants' Exhibit No. 56.

The Master:
It will be admitted.

(Thereupon, said instrument was admitted and marked in evidence as Defendants' Exhibit No. 56.)

Mr. Berry:
That's all we have at this time, Your Honor.

(There being no further witnesses available to permit the continuance of the hearing at this time, a recess was taken until 1:30 P. M., the following day, December 16, 1941.)

Thereupon, the hearing was resumed on the 16th day of December, A. D. 1941, at 1:30 o'clock P. M., at which time the following proceedings were had:

1426 HOLLIS RINEHART, JR., was called as a witness on behalf of the Objecting Creditors, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Walton:

Q. Will you please state your name?

A. Hollis Rinehart, Jr.

Q. And where do you live, Mr. Rinehart?

A. Coral Gables, Florida.

Q. Have you had any official connection with the City of Coral Gables?

A. Yes, I have. I have served as City Commissioner of the City between 1935 and 1940.

Q. Was that during the period of time that the City adopted Ordinance No. 269 and exchanged certain bonds and tax participation certificates under the ordinance?

A. Yes.

Q. During that period of time did you have any dealings with Ed. C. Wright or Ed. C. Wright & Co.?

A. Do you mean individually?

Q. Well, individually or in any other capacity.

A. Yes. As City Commissioner I was delegated on two occasions to talk with Mr. Wright in regard to the bonds that he held.

Q. On one of those occasions did you go to St. Petersburg, Florida, to see him?

A. Yes, I did.

Q. Can you fix the approximate time at which you went there?

A. No, I can't; not from my recollection or independent memory.

Q. Will you state what was the purpose of the trip to St. Petersburg?

A. The purpose was to see if we couldn't make some arrangement to get the bonds that Mr. Wright held into

the plan or arrange to have someone buy them from him who would bring them into the plan.

Q. And did you discuss the matter with Mr. Wright?

A. I did.

Q. Will you state what transpired?

A. Well, I first made an effort to get Mr. Wright to exchange his bonds into the plan. I didn't have much hope of success because we hadn't been successful before, but I did make a further effort. I failed in that. I then explained to Mr. Wright that he was one of the few large bondholders remaining outstanding, and that I, as a commissioner, and the whole commission viewed him as a stumbling block in the plan that we were trying to put into effect, and it might be possible to arrange for someone to buy his bonds so he would get the money which seemed to be what he wanted, rather than exchange of the newly issued bonds, and then having accomplished that, the new owner might be willing to exchange the bonds. With that in mind I attempted to get him to place a price on his bonds so that we could see if it was possible to get some third person to pick them up. He did place a price on the bonds, and I reported that back to the City Commission, or to Mr. Exselsen, who was the attorney for the City at that time in working out the bond settlement, and my recollection is that following that, either I, personally, or someone else, I think it was myself, advised Mr. Wright that arrangements had been made to buy his bonds and if he would send them to the Chase National Bank, I think it was—either Chase National or Central Hanover, in New York, that he would receive his money.

Q. Was that arrangement consummated?

A. I had nothing to do with the consummating of it, but my recollection and information is that it was.

Q. Well, Mr. Rinehart, during those negotiations did you at any time inform Mr. Wright that the City of Coral Gables was attempting to purchase his bonds?

A. No.

Q. What did you tell him on that point?

A. Just as I have stated. What I told him, in effect, was this, that there were certain bondholders or brokerage houses in New York which had been aiding us in putting our plan into effect, and that possibly we could get one of those bondholders or some brokerage house to find one of its customers who would buy the bonds and thereby we would get them into the hands of what I called friendly hands, who would in turn deal with the City on a better basis than evidently Mr. Wright was willing to deal, which would enable us to exchange the bonds and put the plan into a hundred per cent effect, so I did not tell him that the City had the money to buy them or that the City was going to buy them.

Q. Was there some particular reason for not telling him that?

A. Well, we were—the City was trying to make as good a deal as it could with all of the outstanding bondholders, and I for one, and I don't think the Commission felt it would have been a good policy to let it be known the City had any money to buy bonds even if it wanted to, so I wouldn't have revealed that fact to him, that we had the money with which to do it.

Q. Then as I understand it from your testimony, Mr. Wright had no means of knowing that the City was attempting to purchase his bonds?

A. No, I don't say that. All I say is that I didn't tell him we were, and in that conversation I didn't say anything that would lead him to believe that the City was going to purchase those bonds. I would say on the contrary I would do everything to lead him to believe otherwise. There was one other phase of the negotiations with Mr. Wright that were what I would term a sort of a gentleman's agreement between Mr. Wright and the City, through me, and that was that we knew that Mr. Wright had customers who relied on him in the handling of their bonds, and that these customers might turn up, or some

of them did, with some City bonds, and Mr. Wright agreed if we would be—or, if we were successful in getting him his price for his bonds, that he would help us in any way consistent with his own affairs in persuading such customers who held City bonds to bring them into our plan.

Q. Now, at the time you were negotiating with Mr. Wright you knew that he held certain past due bonds and certain future maturing bonds?

A. Yes, we did. We knew—at that stage I think we had a fairly complete list of the bonds Mr. Wright held, and we knew that some of them were still not yet due.

Q. Did your negotiations for the purchase of bonds contemplate the purchase of all of his holdings, or did they contemplate merely the purchase of his past due bonds?

A. My recollection isn't entirely clear on that. I know we would have liked to have purchased everything he had, but our main purpose was to get the past due bonds out of the way.

Q. And the City did not purchase his future maturing bonds?

A. My recollection is they didn't at that time, but I am not absolutely positive on that. I think the records would probably show that. On that question, you say the City did not purchase them. I don't know whether the City did or not. I didn't follow the bonds—the sale that came out of that trip of mine and those negotiations; I don't know whether the City purchased them or some third person purchased them. I didn't follow through on that. I simply reported the fixed price for the bonds that were sent to New York, and I do understand they were bought, but I don't know what the machinery was about purchasing those bonds, whether the City did it or some third person did it.

Q. Was the entire agreement with Mr. Wright, which you made, carried out?

A. So far as the delivery of his bonds to the Chase National Bank and the payment of the money to him, I would say yes. Whether or not he was called upon to use his persuasive methods in bringing in customers' bonds, and what would result from that, I don't recall what the result of it was. I do know that he was asked to assist in that connection. Whether his assistance was helpful or whether he assisted, I don't remember the results.

Q. Mr. Rinehart, why was it that the City did not at that time or prior to that time file a petition in bankruptcy?

A. Well, all I can give you in answer to that question is my own opinion and feelings on the subject, which I had at the time when I was a Commissioner, and that was that I felt and the majority of the commission felt that we would be better off if we could reach a compromise settlement with our bondholders, that we would avoid the necessity of a long drawn out law suit, it would be less expensive, it would enable us to put a plan in effect more quickly, and thereby our city credit would be restored more quickly, and also at that time there had been no bankruptcy proceedings carried through to a completion under the Wilcox Act, and I for one, and I think some of the other commissioners were alarmed as to just what the procedure would be from the standpoint of the future operation of the City, or the operation of the City pending the bankruptcy proceedings. There was some thought that maybe the Federal Court might put an actual receiver out there who would have to Okeh every expenditure of the City, and it might possibly hamper the operation of the City's affairs, which didn't make it exactly an attractive procedure, plus the fact that we had presented to us a plan to compromise our debt, which looked attractive and feasible, by a man who had had experience and his record showed he had successful experience in handling matters of that kind, and it was left with us on a basis that we didn't have to pay any fee for that man's services

unless he was successful, unless he produced a plan and consummated a plan which we, as a commission, were willing to accept. That made it attractive to the City, at least in making an effort to make a settlement before going into bankruptcy. It is a little long drawn out, long winded answer, but that's the best I can do with it.

Q. Now, in connection with that decision of choice not to proceed through bankruptcy, did the City also undertake to effect separate compromises with such of its creditors as would not accept the general terms made available?

A. Yes, it did.

Q. Did the plan under which the City proceeded contemplate that would be done?

Mr. Adams:

We object to that; the plan is in the record and is the best evidence of it, and it is an unfair question to ask this witness.

Mr. Walton:

If the Court please, one purpose of this testimony is to show that the plan attached to the petition and which the City has presented to the Court, is not the plan under which the City proceeded.

The Master:

Answer the question.

A. I would answer the question in this way, that the plan itself didn't contemplate any such outside commitments or agreements, but the Commission found it necessary to make arrangements in regards to certain bondholders and judgment holders who wouldn't come into the plan as it was set up in the plan itself.

Q. Am I correct in understanding, then, that as to certain ones who wouldn't accept the general terms, the

City found it necessary to depart from those general terms?

A. They found it—the answer is "yes", but I would like to say further that when you say, or when I say or you say "found is necessary", it was feasible and a necessary thing to do to carry out the plan and the program.

Q. Maybe I should change it from "necessary" to "deemed it advisable and expendient".

A. That's right; that's what I was thinking; and the answer is "yes". That's correct.

Q. And the City, when it deemed it advisable and expedient to depart from the general terms, it did so?

A. That's correct.

Q. After the time at which you negotiated the sale by Mr. Wright out of his past due bonds, were there any subsequent negotiations with him, directly, or indirectly?

A. Well, I was going to say, not directly; but indirectly, yes.

Q. Will you state what they consisted of and how they culminated?

A. Well, some time after that, as a matter of fact I would place the time possibly three weeks to four weeks before the Petition in this present suit was filed, Mr. Exselsen, who was the attorney who handled the compromise settlement for the City, stated to myself, at which time I was not still a member of the City Commission of Coral Gables, and I think to Paul McGarry, who I believe was still on the commission—yes, I know he was—wait a minute; I'll change my answer there. I was a commissioner at the time, and so was Paul McGarry. And he stated to us that he was still hoping to work out some arrangement which would bring the Wright bonds which had been purchased into the plan, and that he had made arrangements through a third person who had obtained from Mr. Wright a commitment or an offer as to what basis those bonds could be brought in on. The Commis-

sion talked it over and I remember distinctly there was a meeting, a lunch at Child's Restaurant where it was talked over before the entire commission and Mr. Shaw, the City Clerk, and I think—I know Mr. Adams, the City Attorney was there at the time. It was known then as a fact that the Petition which was filed in this case was already prepared and drawn, and I think signed by the proper City officials but had not been filed. We didn't get very far at that luncheon at Child's. It wasn't a very good place to talk, for one thing, but out of that meeting it was agreed we would meet the following day, and I think the time was set for four o'clock the following day, and that at that meeting at four o'clock, which was to be held at the City Hall, Mr. Exselsen would be there. Mr. Exselsen was not present at the meeting at Child's Restaurant. Mr. Exselsen would be there to explain to the Commission the nature of the negotiations he had been carrying on, and that the commission would reach a decision, and that in the meantime the petition would not be filed, but would be held off of the record until we had had this opportunity for one final effort to see if we would accept or aree to take over these Wright bonds.

Mr. Adams:

If the Master please, pardon me for interrupting; I want to move to strike this question, and the testimony of the witness in response to this question, on the ground that it is not material and doesn't go to any material issues in this cause, that it relates apparently to efforts at compromising a dispute between two parties, that the record shows were not successful, and that as such it is incompetent and irrelevant.

Mr. Walton:

May it please Your Honor, I think this testimony relates to a number of issues in the cause. First of all, it relates to the issue, whether, if the City had ever had any plan

which constituted in law a plan of composition, that plan had been completely abandoned by the City, and was no longer susceptible of being treated as a plan of composition. I think it relates, second, to the issue of good faith of the City in filing this petition at a time when it was in the midst of negotiations for a separate compromise with certain creditors, and I believe that on both of those issues this testimony is highly material and extremely revelant.

The Master:

The motion is granted.

Mr. Walton:

May it please the Court, the objecting creditors, Ed. C. Wright, desires to make the following proffer of testimony, and proffers to prove by the witness, should he be permitted to continue his answer to the question, that the witness would testify that at the meeting held in Child's Restaurant which he has already mentioned it was agreed that a further meeting would be held the next afternoon at 4:00 p. m., and that prior to the meeting the next afternoon at 4:00 p. m. the Petition in Bankruptcy which had been drawn and signed would not be filed; that the meeting was held the next afternoon at 4:00 p. m., and that the witness and Mr. Exselsen discussed at the meeting the terms of compromise then under consideration, and that the discussion had proceeded for some time, after which one of the gentlemen present at the meeting informed the witness and Mr. Exselsen that further discussion was useless because the Petition had been filed that afternoon before the 4:00 o'clock meeting was held; and the witness would further testify that upon that announcement being made, no further negotiations for compromise were had.

Mr. Adams:

We object to that proffer of testimony on the same grounds that we objected to the testimony given, and move to have it stricken.

The Master:

Mr. Walton, you may prove the outstanding facts that you have proffered to prove, but do it briefly, please.

Mr. Walton:

Yes, sir.

By Mr. Walton:

Q. Mr. Rinehart, following the time when you negotiated the sale by Mr. Wright or Ed. C. Wright & Company of the past due bonds, were further negotiations held for the purpose of acquiring or settling other bonds held by Mr. Wright or Ed. C. Wright & Company?

A. Yes.

Q. In what form were those negotiations held?

A. Mr. Exselsen acquainted me, as a Commissioner, with the fact that he had a proposition which would enable the City to take over the Wright bonds. I presented that to a joint meeting, an informal meeting of the commission, in Child's Restaurant, and we agreed that we would meet the next day at the City Hall for further consideration, at which time Mr. Exselsen himself would be present to explain his proposition.

Q. Now, when you say a further meeting, do you mean a further meeting of the City Commission?

A. That's correct.

Q. Was there any agreement made concerning the filing or withholding of the filing of the Petition?

A. Yes. At a very informal meeting at Child's Restaurant it was agreed and announced to all the commissioners by the Mayor, who instructed the City Attorney in my

presence, that the Petition would not be filed until after we had held the meeting the next day.

Q. By the meeting of the next day do you mean the meeting set for four o'clock in the afternoon?

A. Of the next day, yes.

Q. Was that subsequent meeting of the next day held?

A. Yes, it was.

Q. Will you state what transpired at it?

A. All the commissioners were present, Mr. Adams, the City Attorney, was there, Mr. Redfearn was there, and the City Clerk was there, and I think the City Manager. Mr. Exselsen presented the proposition based on which he advised the Wright bonds could be acquired. I spoke on it at some length, and in the midst of my comments on the proposition Mr. Redfearn announced that there was no use talking any further, that the Petition had already been filed, and that was the first I had heard of it, and I immediately stated it was no further use to talk, and we didn't discuss it any more, and then I left the meeting.

Mr. Walton:

You may take the witness.

Cross Examination.

By Mr. Adams:

Q. Mr. Rinehart, at the time you negotiated with Mr. Wright for the purchase of certain Coral Gables bonds, did he not represent to you that the bonds under discussion which were purchased were all of the Coral Gables bonds which he himself owned, or his company?

A. I would answer it this way. It was represented to me that they were all of the past due bonds. I will have to admit very frankly that I do not recall whether that would have included all of the bonds which were not past due, but certainly it was represented to me, and I thought we had made an arrangement to take out of his hands.

all of his past due bonds that he owned or his company owned, or which he controlled.

Q. Now, did he make any representations to you at that time as a part of those negotiations as to what he would do with the bonds that were not then past due?

A. No.

Q. And owned by he and his company?

A. No. I will have to answer it this way. It seems to me I recall we tried to get a price on those, and either it was too high or at such a figure we didn't even consider them; that would be so much for that stage of it, but that was the time that he agreed that he would assist the City in trying to get the bonds held by any of his customers and clients, and so on, as I recall it, that were past due or susceptible of being brought into the plan; he did agree to that at that time.

Q. Did you get any idea from him at that time as to the quantity of bonds owned by him or his company in addition to those that were sold?

A. I have no recollection of whether I did or not. If I did, I got it in the form of a memorandum which I haven't got or wouldn't remember. I don't recall that I did, Mr. Adams.

Q. Well, he has filed claim in this proceeding on $253,000.00 worth of bonds. Do you think, in your recollection of your conversations with him, that he had any such quantity of bonds at that time?

A. I haven't any recollection of that. My basis for that is that at that time I recall that we had found out, ourselves, how many bonds Wright had or controlled, and we knew that, but my recollection isn't clear on that.

Q. You don't recall how many there were?

A. No, I do not; it has been some years ago, and I wouldn't know the details.

Q. Wasn't it a fact that the bonds that were sold at that time were substantially all of the bonds that Wright owned—Wright or his Company owned?

A. I would say yes, otherwise we wouldn't have been interested in working out the deal, on any small percentage of them.

Q. Yes. Now, Mr. Rinehart, you testified about the negotiations with Mr. Wright just prior to the filing of the Petition in this proceeding. To refresh your recollection, wasn't the purchase of those bonds in the fall of 1937?

A. As a result of my trip to St. Petersburg?

Q. Yes. Was it not shortly afterward, to put it another way, that may help you, wasn't it shortly after the sale of the delinquent tax assets by the City?

A. It was certainly after that. I am going to have to be perfectly frank to say I have no recollection of when I went to St. Petersburg. I know it should show on the City records, because my expenses were paid, and I do know it was after the sale of the tax certificates.

Q. Well, wasn't it during the period of time that the City was in such desperate straits, with law suits pending against it on past due bonds and peremptory writs issuing, and threatened suits on other past due bonds?

A. Yes, sir.

Mr. Berry:

I object to the form of that question, if Your Honor please, that it was at the time the City was in desperate straits, or something like that. Let him give the year or some event. I think that's a conclusion of the witness.

Mr. Clarke:

I would like to further object to it on the ground of the mention of peremptory writs, because the record in this case shows those peremptory writs were issued by agreement.

The Master:

The objection is overruled.

A. The answer is yes, it was at that time, and we were making a special effort to try to get in any past due bonds that might be presented to us later in the form of a peremptory writ.

Q. Now, during the winter of 1937 and 1938, to put it a little different way from the direct question, did not the City use available assets that were not appropriated and allocated to other matters, in the acquisition of past due and future maturing bonds in an effort to consummate a 100% voluntary completion of the refunding?

A. That's correct; we did.

Q. Now, after the purchase of those bonds, how many different times were negotiations held with Mr. Wright with reference to bonds of Coral Gables that he held or controlled?

A. I wouldn't know the exact number, but I would say several; three or four times, either with Mr. Wright or through representatives of his who appeared before the City Commission or before the individual city commissioners, who discussed the possibility of some basis on which a settlement could be reached.

Q. Was Albert Roberts, Jr. one of the representatives of Mr. Wright who discussed settlement?

A. Yes, sir, he was. He stated that he was.

Q. He came before the Commission as his representative?

A. That's correct.

Q. And those negotiations lasted over how long a period of time?

A. Do you mean all of them?

Q. All of them.

A. I would say a long period of time. Months, certainly. And they would break off and take on again, and last for weeks and months, and break off and take up again, and I would say except for intervals they might have been continuous.

Q. Until the bankruptcy was—the Petition in bankruptcy was filed?

A. Well, I think they broke off before that, when the suit was filed against the City prior to the time this bankruptcy petition was filed. That was the termination of the negotiations.

Q. What suit was that?

A. That was the suit Mr. Wright brought against the City to attempt to subject certain of the City's monies to the payment of his bonds.

Q. You say Mr. Wright. Wasn't that the suit of the American National Bank?

A. Yes, that was the suit. Well, we always felt it was Mr. Wright, but it is true that was the suit of the American National Bank.

Q. It was in the name of the bank?

A. In the name of the bank.

Q. Do you recall when that suit was filed?

A. No, I don't remember.

Q. To refresh your recollection, wasn't that filed very shortly prior to an interest payment date on the coupons of the refunding bonds?

A. Well, I wouldn't know that as a fact, Mr. Adams; it may have been; I do know that it came very suddenly.

Q. Didn't that suit come on the morning after a conference?

A. Yes, it did.

Q. Was that conference a termination of negotiations?

A. No. As I understand it, so far as the City felt, we were still conferring on the possibility of accomplishing something when the suit was started.

Q. And the suit was started one morning after a conference had been held with the representatives of the bank and Mr. Wright?

A. That's correct.

Q. And so far as the City was concerned, they understood that the negotiations were still open?

A. That's my recollection. Correct.

Mr. Adams:

I believe that's all.

Re-Direct Examination.

By Mr. Berry:

Q. Mr. Rinehart, prior to the meeting which was followed by the suit of the American National Bank, hadn't there been a tentative agreement made with Mr. Roberts recording the Wright bonds, which was in writing?

A. I wouldn't call it an agreement, if I recollect that period. The basis on which he would further discuss the possibility or probability of bringing the Wright bonds into a plan had been reduced to a memorandum, I think between the Mayor and Mr. Roberts, but there hadn't been any agreement as to what either Roberts would do for Wright, or what the City would do.

Q. Well, at the meeting in December, 1939, preceding this suit, the Commission did tell Mr. Roberts that that writing would not be carried out. Wasn't that true?

A. Well, I can't remember that. I wouldn't say it was true or untrue. I don't think, in my recollection, it had ever reached that point in the negotiations Roberts handled. Roberts was presenting something to us as wanting to find something—some common ground on which we could discuss taking in the Wright bonds, and it was a sort of a trading proposition, each side trying to get the other side to commit itself first, and neither side ever did. I don't remember that there was any definite agreement for an offer we made him that he refused, or any definite offer he made us that we refused because Mr. Roberts was very careful to tell us that he couldn't commit Mr. Wright to anything that he presented, but he would be willing to take it back to him and recommend it.

Q. Mr. Rinehart, I show you Defendants' Exhibit No. 38 in this case, and I will ask you if this is the writing which we have been discussing about a settlement (handing document to witness).

A. What is the question, now? (Question read.) You will have to elaborate your question a little, Mr. Berry. I can't answer it from that.

Q. I asked in a prior question if there was not some sort of a tentative agreement between Mr. Roberts and either the City Commission or certain officials of the City that was subject to ratification or adoption by the commission officially, and if that is not the paper which I refer to.

A. Well, I will have to qualify my previous answers to your questions by saying that I had completely forgotten the existence of this document, and from the way it reads, and purports to be, I would say that this is a carbon copy of an agreement which was drawn as a proposed means of refinancing the Wright bonds. Whether this was actually entered into, I don't know, and I would say it had not been entered into.

Q. Do you recognize that paper as one you have seen before, Mr. Rinehart?

A. Well, I think I do. It is very hazy, but I may have seen that. I certainly would have seen it if it had been executed, otherwise I might not, because it was read at a City Commission meeting, and it doesn't refresh—I don't remember it very well at all.

Q. To refresh your recollection, Mr. Rinehart, do you recall that that instrument was signed but left with a member of the City Commission, I believe Mayor McGarry, not to be delivered until it was approved by the entire commission?

A. Yes, that does ring a bell. I do remember that, now.

Q. That is a fact, is it not?

A. I do remember that.

Q. And at a metting in December it was decided not to carry out the agreement that is set out in that paper, Exhibit 38?

A. Well, whether it was the meeting in December, I wouldn't say but I do recall now that the Commission left it with the Mayor, and under certain instructions given him, for delivery to Mr. Wright, and it was not carried out; and just when the Commission retracted those instructions to the Mayor, I don't know.

Q. But they were later retracted—the instructions?

A. I would say yes, they were.

Q. Do you recall, Mr. Rinehart, whether the validity of the bonds held by Mr. Wright, and the coupons or bonds held by the American Bank, were brought in question prior to that suit?

Mr. Adams:

We object to the question as being totally irrelevant and incompetent and immaterial.

The Master:

Answer the question.

A. I don't recall, Mr. Berry, whether it was specifically brought into question prior to the suit. I do know that there were certain people in Coral Gables, and lawyers in the community who have always felt that quite a few of these City of Coral Gables bonds were invalid, but I don't know that the City Commission ever took it seriously. I know I, for one, did not.

The Master:

Just a minute. Did you say "valid" or "invalid" there?

A. I said "invalid", or intended to say "invalid".

The Master:

Read him his answer. (Answer read.)

Q. Mr. Rinehart, do you recall at this meeting immediately preceding the filing of suit by the American Bank they were informed in that meeting that no further negotiations would be had on account of the alleged invalidity of these bonds?

Mr. Adams:

We object to the question as being leading and contrary to the answer the witness has already given on cross examination.

Mr. Berry:

I think in a way I am cross-examining, and I am trying to refresh his recollection.

The Master:

Answer the question.

A. Yes, I think I remember now that Mr. Redfearn, I believe, was present at that meeting, and he stated to the Commission that the bonds were invalid, anyway. I do remember that statement he made. Whether that was the reason the negotiations were called off, I am not prepared to say that, but I know there was a statement of that kind made.

Q. And you do recall that the suit was filed shortly thereafter?

A. Yes, I do.

Mr. Berry:

That's all.

The Master:

Anything further, Mr. Adams?

The Witness:
I would like to have my last answer read to me.

(Answer read to the witness.)

A. (Continuing) That part of my answer in which I state that whether or not that was the reason that the negotiations were called off I do not know, I would like to change that to say that the negotiations were not, in my opinion, called off; they were continued; and I felt that they were still in progress, although the matter may have—that meeting may have adjourned without reaching any definite decision. There was no formal calling off of the negotiations by the Commission. I think that's an accurate statement of it.

Mr. Berry:
That's all.

(Witness excused.)

1451 G. N. SHAW was recalled as a witness on behalf of the Petitioner, for further cross-examination, and being still under oath, testified as follows:

Cross Examination (Resumed).

By Mr. Berry:
Q. Mr. Shaw, on yesterday we were talking about certain certificates that were re-purchased by the City of Coral Gables. Now, referring to the certificates in relation to the Laesch tracts, what was the total amount of certificates on those tracts that were purchased by the City?
A. The total amount was $10,095.45. Would you like to have me describe their composition, Mr. Berry?
Q. Yes, if you will.

A. We had sold Coral Gables Development Company certificates for the years 1932 through 1936, in the amount of $4,636.93. The Coral Gables Development Company had acquired from others the certificates which had been sold by the City in 1928, I believe, for the years 1926 and 1927, amounting to $5,458.52. All of these certificates were acquired by us for face value. They were then canceled, as I described yesterday, as a part of the consideration for the continuance or re-establishment of the Laesch tract rights-of-way. In addition to the certificates we purchased, the City canceled 1937 and 1938 taxes in the amount of $794.20, and 1931 taxes in the amount of $2,553.13, which it still held, holding the 1931 in escrow under its agreement with the Development Company. I find that the amount of cash paid by the owners of the Laesch tract in consideration for the cancellation, together, of course, with the additional consideration of the rights-of-way, was $542.41, being the debt service portion of the taxes for 1936, 1937 and 1938; taxes for the prior years were canceled in full without cash payment.

Q. Now, Mr. Shaw, on the Laesch tract at the time these trades were made, you held in delinquent taxes a total of $13,442.78, did you not?

A. That is correct.

Q. And they paid you in cash $542.41?

A. That is correct.

Q. Then you paid for the rights-of-way by cancellation of these certificates $12,900.37.

A. Not entirely for the rights-of-way, Mr. Berry. There was another phase of the matter. The Laesch suit had gone very definitely against us. There was a strong possibility that the City would be sued to require the cancellation of these taxes, and it was with that in mind as well as the rights-of-way that the City Commission entered this deal, feeling that such a suit, if successful, would be a terrible precedent in the case of other ouster suits which were pending.

Q. What were the rights-of-way you got from the Laesch tract, or Laesch Estate?

A. The principal rights-of-way, Mr. Berry, were those for the canal, the so-called Mahi Canal which was then in process of being extended by private means; not by the City, but by private means; and the right-of-way to Alhambra Circle, which is a sort of a belt around through the City as a whole, and constitutes a link between the Riviera section below the canal and the rest of the City north of the canal. In addition to that there were rights-of-way for some of the city streets lying south of Alhambra Circle.

Q. Well, now, were these rights-of-way ever valued by any commission or appraiser of any kind?

A. No, they were not valued, but the Commission and property owners south of the canal and in the lower Riviera section felt that they were essential to the proper development of that section in the future.

Q. Was there a resolution of the City Commission condemning this land or accepting the conveyance of it?

A. No, sir.

Q. Or authorizing the cancellation of this $12,900.00 of taxes?

A. There was a resolution authorizing this cancellation in consideration for the rights-of-way, and I am not sure whether there was an additional expressed consideration in the abandonment of the—well, that would have not been necessary because the cancellation of the taxes would have wiped out any possible suit. The Commission felt that the two accomplishments, of securing the rights-of-way and of preventing the adverse decision in a suit of the kind I have described, it was cheap at several times the price.

Q. The canal right-of-way, was that through the property against which these taxes were assessed, or other property owned by the same owners?

A. Through that same property.

Q. Is the canal, then, located outside of the corporate limits of Coral Gables?

A. A small portion of it, now. That portion constitutes a link with another portion of completed canal which lies within the existing corporate limits, and still a greater portion of platted but at present uncompleted canal lying beyond that.

Q. Is the City under contract to supply these rights-of-way or is that something you just considered desirable?

A. The City is under no contract except that it feels that in the future the land which is now platted as being on waterways, even though those waterways are not completed, that in the future those lands will be far more valuable if the waterways are completed than otherwise.

Q. So this is a part of the beauty development, and not necessity development?

A. No, sir. I would say that this doesn't constitute a beauty development. This constitutes wise and careful planning for the future assessed values of the City.

Q. Now, the street right-of-way that you have mentioned, Mr. Shaw, of this circle or belt line, was that through part of the property against which these taxes were assessed, or another tract of land under the same ownership?

A. No, sir. To the best of my knowledge the owners of the Laesch tract about which we have been speaking owned no other land in the City of Coral Gables. As I have described in the case of the canal, Alhambra Circle cut through these ousted tracts, and the closing of the street there would have broken this link between the upper and the extreme lower sections of the town.

Q. When was Alhambra Circle opened as a street?

A. I believe the first plats are in 1926.

Q. Well, these rights-of-way, were they just widening the Circle, or what were they? Didn't you have rights-of-way already, if you opened it in 1926?

A. The ouster was based upon title acquired through the foreclosure of a mortgage, which foreclosure, I believe, wiped out the rights-of-way. There had been no acquiescence by the owner of the mortgage.

Q. Mr. Shaw, have you a copy of the resolution or ordinance relating to this settlement on the Laesch tract?

A. I can secure one, Mr. Berry; I do not have one with me.

Q. Will you secure that and if you will, deliver it to us, and we will then offer it for filing, or not, as we deem advisable, depending on what it contains?

A. Yes, sir.

Q. Mr. Shaw, the Five Hundred odd-Dollars you received on that, what was done with that fund?

A. That was put into the debt service accounts for which it was levied, which were the levies for, or rather, the accounts for the January 1, 1937 refunding securities, the mandatory levy funds, and possibly other minor debt service items.

Q. Was the debt service portion of the 1937-38 tax levy on that, was that a total amount of $532.41?

A. The 1936, '37 and '38 was what was included.

Q. Well, how could a 1936 debt service levy apply to a 1937 bond, Mr. Shaw?

A. We got the 1936, anyway, Mr. Berry, and I don't know that that applied. I may be wrong to that extent.

Q. Well, if there was a debt service levy in 1936, it would refer to the then outstanding bonds, would it not?

Mr. Adams:

If Your Honor please, we object.

A. I hadn't considered that point, Mr. Berry.

Mr. Adams:

We object to this question as calling for a legal opinion of the witness, and being incompetent and irrelevant to the issues in this cause.

Mr. Berry:

If Your Honor please, I am simply attempting to show, without going back and putting all these ordinances into the record here, from the City Manager who collected this and who must of necessity know that they did not levy a debt service for bonds not yet issues, and that this was a clear diversion of these funds from the bonds which we are here presenting and asking to be paid, for bonds issued at a much later period, and if there is any objection to proving it by this witness' knowledge—it doesn't take any legal knowledge of that; he knows very well there was no debt service levy for bonds not yet in existence, and if it was applied, he knows it was done either by himself or at the direction of his commission at a later period when the bonds were actually issued and outstanding.

The Master:

Answer the question.

A. Mr. Berry, in our operations we have considered that we were operating on the plan of January 1, 1937 so far as our levies and collections were concerned, and we have reserved for the outstanding indebtedness, as has been brought out here, that portion of the levies so made which was applicable to them. Under our plan, the 1936 taxes, debt service taxes which were levied I believe in the amount of five mills, were declared by the plan to be—I don't know whether expressly or by inference—free assets of the City after the payment of the first six months' interest on the refunding bonds. We have complied with that by paying that first six months' interest on all of the bonds that have been exchanged, and we are reserving together with the specific levy reserves, the amount of that six months' interest applicable to the unissued refunding bonds, and in our operations, as I have said, we considered that in doing so we were meeting our liabilities under the plan.

Q. Mr. Shaw, what I asked you was, when you levied the 1936 tax levy and prior years, whether in any ordinance you levied any tax for the benefit of the bonds that were issued in the year 1937 for the first time.

A. No, we would not have.

Q. And you did not?

A. We did not.

Q. Now, what you have just stated is that in 1937, by a resolution in reference to your plan you attempted to apportion these prior levies to the 1937 bonds. Is that correct?

A. That is correct, by agreement with the huge majority of our creditors.

Q. Now, Mr. Shaw, if you will, tell us briefly about the remaining approximately $3,00.00 of delinquent taxes you purchased from the Development Company at this time we are discussing.

A. The exhibit introduced yesterday showed the re-purchases of the tax certificates from the Development Company, and showed $13,286.57. The Laesch tract accounts for $10,095.45 of this. The re-purchases in connection with that LeJeune Road right-of-way amount to $2,-191.12, and I do not find any disposition has been made of those taxes since our repossession of them. We also purchased not directly from, but through the Development Company, the right-of-way to a portion of Riviera Drive, lying just north of Bird Road, which was under pending foreclosure on a mortgage under the same conditions as the Laesch tract. We paid $1,000.00 for this right-of-way and delivered the consideration in the form of a credit to the Development Company which was placed in this account.

Q. Now, Mr. Shaw, what rights-of-way in the LeJeune Road did you acquire for that $2,191.12 of taxes that are still held in suspense?

A. The county was widening all of LeJeune Road. The original plats of the City made LeJeune a winding

thoroughfare between Bird Road and the railroad, a stretch of about one-half a mile; not only winding, but narrow as compared with the rest of LeJeune Road. The County agreed to re-locate the road and improve it and widen it providing the City would assist in clearing the right-of-way. These taxes represent taxes on lots on the inner curve of the road where it was desired to straighten it.

Q. Well, have there actually been deeds or other instruments of conveyance prepared and delivered conveying that right-of-way?

A. I think there must have. I have not gone into that, but the County would not have, certainly, proceeded with the work unless they had been satisfied as to the right-of-way. Our sole part in it was to get rid of these taxes, and it was a very small contribution to a very decided improvement in the City.

Q. Well, the taxes have not been canceled, you say, up to this time?

A. No, sir. There is a question, Mr. Berry; the new right-of-way affected only a part of the lots upon which these taxes were levied, and there is still the question of re-platting the remainder of the lots.

Mr. Berry:

I think that's all, if Your Honor please.

The Master:

Are there any further questions of Mr. Shaw?

Mr. Walton:

I have some questions, yes, sir.

Cross Examination.

By Mr. Walton:

Q. Mr. Shaw, I hand you a printed pamphlet dated October 1, 1941, and ask you to identify it, please, sir, and state what it is.

A. That is a statement prepared by my office to be used in disseminating information to both creditors and taxpayers, and in addition, prospective taxpayers.

Mr. Walton:
I ask to have the pamphlet admitted in evidence as Defendants' Exhibit No. 57.

Mr. Adams:
No objection.

The Master:
Admitted in evidence as Defendants' Exhibit No. 57.

(Whereupon, the instrument was admitted and marked as Defendants' Exhibit No. 57.)

Q. I will ask you to examine Defendants' Exhibit No. 5, and state whether it indicates the manner in which the City took up bonds which it purchased.

A. Defendants' Exhibit 5 shows in some detail the manner in which Carl L. V. Exselsen made the expenditures and consummated the transactions which he had been authorized to undertake out of the funds which were entrusted to him.

Q. And what is the manner thus shown?

A. By the purchase out of his Attorney Account of various and sundry cashiers' checks which seem in all cases to have been issued by the Chase National Bank.

Q. And does it show the manner in which the bonds purchased from Ed. C. Wright were taken up?

A. Yes, sir. There, in the item dated November 8, 1937, it shows a cashier's check of the Chase National Bank in the amount of $26,240.00 to Ed. C. Wright for the purchase of certain hold-out bonds and interest in the amount of $55,809.12. I might say at this point that in some minor respects this column "Total Debt Purchased"

does not exactly coincide with the computation of those items made by the City and may be slightly in conflict with my own exhibits. In Mr. Exselsen's figures, certainly in some of them, perhaps in all, he computed interest to the date of purchase, which of course was the total liability of the City of that time, and therefore is the proper figure to be shown as the total debt acquired. In the exhibits that I have prepared, I think in all cases we have used the interest only to January 1, 1937, the date of the refunding. Another point is that Mr. Exselsen's figures in the case of judgments might include interest upon interest which have never been taken into account on our own books except where they became actual mandatory levies, and other things of that nature.

Mr. Walton:

That's all the questions that I have, Your Honor.

(Witness excused.)

Mr. Walton:

If the Court please, that is all of the proof which we have available this afternoon. There is one other matter, to be presented by Mr. Gibson; if it is available, it will be here in the morning, and that is all the proof with the exception of Mr. Exselsen.

(Hearing adjourned to 10:00 A. M., December 17, 1941.)

(The hearing in the cause was resumed at 10:00 A. M. on the 17th day of December, A. D. 1941. The appearances of counsel at the hearing were the same as noted at the opening session on December 15, 1941, excepting for the absence of Mr. Watts, and the presence of Mr. W. Terry Gibson).

Thereupon, the following proceedings were had:

Mr. Berry:

The Claimants, The American National Bank, Albert Roberts, Jr. and J. Howard Gould (the claim of Roberts including the assigned claims of Wilie and Thompson) move that the objections thereto which are not verified be stricken as improper and insufficient.

The Master:

That motion is denied.

Mr. Berry:

We ask an exception. The same parties now move that the objections be overruled and the claims be allowed, having been filed in conformity with the rules laid down by the Federal Judge said claims being prima facie, and no evidence having been introduced on behalf of the City, the petitioner, in support of the objections heretofore filed.

The Master:

The Master rules that the burden is upon the Petitioner to maintain its objections, and the Petitioner not having presented proof the objections will be overruled, subject to the right of the Petitioner to present proof in support of the objections.

Mr. Adams:

Save us an exception to the ruling.

Mr. Berry:

The claimants further move that in the event proof is introduced by the Petitioner, that they then be allowed a reasonable time to introduce counter-proof if such is available, since this is the last hearing to be had in this matter, and we do not wish this proof to be introduced without notice on the last day.

The Master:
That motion is granted.

Mr. Berry:
If Your Honor please, for the American National Bank of Nashville, I have no further testimony, except for Mr. Exselsen, of course, if, as and when he appears.

Mr. Clarke:
You might show for the record that on behalf of C. J. Root we have no further testimony to offer.

Mr. Walton:
I have some further questions I would like to ask Mr. Shaw on cross examination at this time.

1464 G. N. SHAW was recalled as a witness on behalf of the Petitioner, and being still under oath, testified as follows:

Cross Examination (Resumed).

By Mr. Walton:
Q. Mr. Shaw, I hand you here a printed pamphlet dated August 26, 1940, constituting a part of Defendants' Exhibit 21, and ask you to state its general nature.
A. The general nature of that pamphlet is a statement of the operations of the levies and funds of the refunding issues of January 1, 1937, from the inception of that issue to June 30, 1940, and with an estimate of the results expected for the year 1940-41, which figures are compared with the figures of the estimate and forecast made in 1936 and introduced here yesterday as Defendants' Exhibit No. 55.
Q. Mr. Shaw, you will note that the first paragraph on Page 1 of the printed pamphlet states that the estimate

to which you have referred was made and published in 1936. I wish you would state when and where that estimate was published.

A. By published in this letter I meant, of course, given in some means to the creditors and the public generally. I found in New York in July of 1940 that rumors had been circulated through bond circles that we were not living up to the requirements of our plan, and found that those rumors were based upon a misunderstanding of the document now known as Defendants' Exhibit 55. Finding at least one copy of this document in the hands of a bond broker, I assumed that there might be others, and proceeded to issue this document to explain the relation of the actual operations to those of the forecast.

Q. Now, that Defendants' Exhibit 55, representing the forecast which was published in 1936, estimated that a certain amount of bonds would be retired each year. Is that correct?

A. That is correct.

Q. Now, in the printed document constituting part of Exhibit 21, do you make any comparison of the amount of bonds actually canceled as against those estimated to be canceled?

A. No, I do not, Mr. Walton. The figures relate to the assessed values of the City, the tax levies, and the use of those tax levies. Since we had canceled the bonds not only in accordance with the schedule, but I believe even in anticipation of the schedule, and the remaining bonds outstanding as shown by this statement so indicated, I saw no reason or perhaps it did not occur to me to put that in.

Q. But still there was no comparison there of the bonds actually canceled as against those estimated to be canceled.

A. No, no comparison appears in this statement.

Mr. Walton:

That's all.

A. (Continuing) I might say further that the propaganda, let me call it, which I was attempting to overcome was directed at our use of the tax collections for the payment of interest and the payment on reduction—annual reduction payments on the tax participation certificates, and this pamphlet is directed entirely toward that.

Q. Mr. Shaw, should it develop that the estimate showed $60,000.00 of bonds estimated as being canceled in a certain year and only $45,000.00 were actually canceled, would that not represent a difference in the amount of money to be received by tax participation certificates?

A. Yes.

Mr. Walton:
That's all.

The Master:
Any questions, Mr. Adams?

Mr. Adams:
No, sir.

(Witness excused.)

Mr. Walton:
There is no further testimony to be offered on behalf of Ed. C. Wright except such as may be forthcoming when Mr. Exselsen submits himself for examination.

Mr. Gibson:
I had expected to have one more witness, who is my client. Unfortunately, the emergency situation in the financial circles by reason of the War has prevented him from getting here, so I do not have him here today; I don't know whether I will have him; should it be possible to get him before this testimony closes, I will then see what the situation is and at that time determine whether or

not I can have him testify, so therefore, I have no further testimony to offer except with regards to the various items of detail heretofore referred to (off the record), concerning the accounting phase of my claim which I will put in at the time Mr. Exselsen is supposed to be here, which is next Monday.

(There being nothing further to be presented at this time, a recess was taken from 11:00 A. M. to 2:00 P. M., at which time the hearing resumed.)

Thereupon, the Objecting Creditors having announced that there was no further testimony or evidence to be introduced on their behalf excepting as stated into the record, the Petitioner herein, in further support of its Petition, introduced the following testimony and evidence in Rebuttal:

1468 B. M. DUNCAN was called as a witness on behalf of the Petitioner, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:

Q. State your name.

A. B. M. Duncan.

Q. Mr. Duncan, what profession or business are you engaged in?

A. Civil engineer.

Q. How long have you been practicing that profession?

A. About thirty years.

Q. What experience have you had, if any, with municipal street maintenance work or construction work?

A. I have had experience with municipal work since the War as City Engineer for Miami from 1923 until

about 1928, at which time I went with the State Highway Department as State Highway Engineer, and remained with them as State Highway Engineer for about four years and was made Consulting Engineer until January, 1937, at which time I became Chief Engineer and General Manager of the Overseas Highway.

Q. Are you familiar with the general type of construction of the streets in the City of Coral Gables?

A. Yes, sir.

Q. Describe that just as briefly as you can.

Mr. Berry:

Wait just a minute. If Your Honor please, we object to going into the streets; that has been gone into in the original proof by the City, and we did not in cross examination intrench upon that at all, and to go again into the condition of their streets and all that is not proper, and it is upon that ground we object to it.

Mr. Adams:

We have Mr. Duncan as a rebuttal witness because their witnesses, or at least one of their witnesses, testified he had been over the streets of the City of Coral Gables and they were in excellent condition.

The Master:

The objection is overruled.

Mr. Adams:

Will you read the question, please?

(Question read to the witness.)

A. Practically all of the paving in Coral Gables was done while I was with the City of Miami, and at various times I was through the work while it was going on. It is what is—what we call the low type local rock pavement

built to the contour of the ground rather than standard city paving. That consisted of clearing and scarifying the natural ground, applying local material which is lime, and a little silica. The depths of that were variable in their construction, depending on the nature of the ground and whether they wanted to raise or lower the streets slightly. On top of that they applied what we call surface treatment, with a sand cover. In our general paving classification it was known as a low type pavement.

Q. What is the normal life in this area of such a type of pavement?

A. I would say that depended entirely on the amount of traffic, and how well they were maintained, and the nature of the subsoil and other things that might affect the life of it.

Q. What is the normal life of the oil sealing on the road with the average daily use?

A. That varies also with traffic and weather conditions. Generally speaking, oil treatment on our state highways, we retreat them from five to seven years where the traffice will run 1,000 to 1,500 cars a day. That life would be extended the way the traffic decreased, down to a certain stage where the weather conditions would deteriorate that treatment if it were not used by traffic. In other words, when your light oils evaporate from your asphalt, it leaves a carbon formation on top of your surface which starts to take water.

Q. Have you examined the streets of the City of Coral Gables recently?

A. I drove over probably forty miles of them this morning, yes.

Q. Have you examined the quantity estimates made by Mr. Garris and Mr. Curry of the portions of the streets that need repairs and work?

A. Yes, sir, I have looked over their figures.

Q. Have you re-figured those estimates?

A. No, sir, I didn't make any calculations on the quantities. I figured that Mr. Garris or your City Manager, either one, were qualified to make such an estimate.

Q. Now, about what portion of those streets need re-sealing?

A. Practically all of your streets need re-sealing immediately except probably some of the downtown section where they have done some re-sealing work in the last few years.

Q. What is your estimate of the cost of that re-sealing?

A. My estimate would be a little higher than their estimate on re-sealing, I think possibly due to the raises in prices since they made their estimate. They estimated that at ten cents a square yard for the customary specifications, which is about one-third of a gallon as asphalt per square yard with a sand cover. I doubt seriously if that could be had for that money now. My estimate on that would be twelve and a half cents a square yard at the present time. That difference would be due to changing prices since they made theirs, probably. Of course, no one can tell exactly what those things cost until the bids are received, of course.

Q. What about the cost of the streets that need re-paving?

A. Well, you have in your downtown section and on your through steets there some work that would pay to put in a better surface than this light surface. Their estimate was fifty cents a square yard on that, which called for re-scarifying some of the rougher parts and adding a better surface than this light surface, and for the work that they contemplated, I am of the opinion that would cost you at least seventy-five cents at the present time, per square yard.

Q. Now, what about the condition of the sidewalks in Coral Gables? Did you make any inspection of them?

A. We made a hurried inspection. We didn't attempt to determine the amount of repair work necessary. You

have, in the millage of sidewalk you have there, you have considerable upheaval from roots of trees, and some broken stuff from trucks and heavy equipment, which should be repaired. Your sidewalk repair, with the planting you have in Coral Gables, will increase rapidly due to the upheaval of tree roots, and due in large part to the class of concrete you have in your sidewalks, which is very light in cement.

Q. Is that a source of constant expense in the future to maintain those sidewalks in a reasonably good condition?

A. Yes, I would say that there is a constant expense on sidewalk repair work, and as I pointed out, from the number of tree plantings that you have in Coral Gables, you may expect an increased amount of that kind of work there.

Q. Now, as to the maintenance and repair work of the streets, what is your opinion about the relative expense of that if done right away, or if the repair work that you testified to is deferred longer?

A. I would say your day of re-treating those streets for economy and proper repair has already passed. I don't mean by that that your street is in bad condition from a traveling standpoint or from a riding standpoint; outside of a few of them, you don't have many irregularities in your streets yet; however, your oil surface that has not been re-treated is in bad condition, and taking water fast, and unless they are treated soon you may expect them to start coming in holes. If that happens, then you have got to re-scarify and go from your twelve and a half cent price to your seventy-five cent price to re-condition them, and by all means the streets that you expect to maintain as the same type, they should be re-treated as soon as funds are available.

Q. Now, have you examined the bridges in Coral Gables?

A. Yes, we have looked at all the bridges this morning.

Q. What condition are they in?

A. Very bad. You have untreated timber bridges on all of the bridges except one, I believe, and about twelve to fifteen years old, and have been repaired with untreated timber, and they are badly in need of repairs—rather, replacement.

Q. Have you made any estimate of the cost of replacing those bridges?

A. Yes. I checked their figures hurriedly, and made a few of my own. On the nine girder type bridges that draw, about the same condition applies there that does on their surface treatment, on account of the advance in prices; those little bridges could be bought somewhere in the neighborhood of $15,000.00 each, provided you could get material at all. That would raise their figure from $108,000.00 to $135,000.00. Now, the one fairly good bridge you have, due to your development on the canal—

Q. Is that the Hardee Road Bridge?

A. Yes. If you have to put in a draw span there to accommodate your boats, I would raise that estimate a lot. They estimated that at $65,000.00. Well, I just completed the estimates on a larger bridge of the same type in the last few days. On the Inland Waterways we use a double-leaf bascule with an eighty foot clearance, and you would probably require a forty foot clearance out there or half of what we would have on our Inland Waterway. Those bridges are costing us $250,000.00 now where we supply electrical equipment and modern bridges, which you have to have here due to fast traffic on the streets and the boat traffic. In other words, I would say a fair estimate on that bridge today would be $125,500.00. And in the other case, where you participate with the County on the Old Ingraham Highway there, if it costs about the same as the others, it is about the same type, Coral Gables' share of that would be about $62,500.00, so I would raise their figure there from $165,000.00 to $187,500.00, and I

would say that's about as good as you can do on those draws, and I am familiar with that construction.

Q. Have you made any estimate of the cost of a sewage system in the business section of the Gables?

A. No, sir, I have not.

Q. Well now, if the Gables should go into the installation of a sewage system in the business area, what effect if any would that have upon these figures on the cost of repaving streets?

A. Well, my experience in these light type pavements, after you have put in your underground work—and they are in need of sanitary sewers and storm sewers right in the business section and in the more congested section—and after they have gotten their underground work in, I would say there is very little value in that low type pavement, and in order to make your storm sewers work you are going to have to put in new curb and gutter, and probably redesign your broad drive there. I would recommend in that case a high type pavement in that particular area to extend through your business section, both from a traffic standpoint and from a drainage standpoint. On that there is about—I ran some rough figures on it—about 78,000 yards, and that type pavement costs you about $3.00 per square yard. Then, on the secondary type that we have already talked about, where their estimate showed 473, leaving a balance of that second item in their testimony at seventy-five cents in place of fifty; in other words, I would raise the secondary and high type pavement from 286,000 to 530,000, roughly, and if their sewer conditions in their business section is in such a condition that they have to go in, I think that would be the proper solution in that area.

Q. Now, what necessity or advantage, if any, is there to a community like Coral Gables in the maintenance of the streets in the manner that you testified the Coral Gables streets need repairing?

A. Well, as I have known Coral Gables, it is a high-class residential section, which their standards of living and building require good maintenance. In other words, I don't believe that you would expect that class of a community to tolerate a street that was full of holes, dust, and things of that kind. I don't think it is economy to let those go bad, even if you anticipated a high type pavement, until you have to repave it.

Mr. Adams:
That's all. You may examine.

Mr. Berry:
I have no questions.

Mr. Walton:
No questions.

Mr. Gibson:
No questions.

(Witness excused.)

1477 G. N. SHAW was thereupon recallesd as a witness on behalf of the Petitioner, in Rebuttal, and being still under oath, testified as follows:

Direct Examination.

By Mr. Adams:
Q. Mr. Shaw, in the Petitioner's Exhibit 19 you show that there have been certain old bonds of the City of Coral Gables refunded since the filing of the petition in this cause. Have you made a schedule describing the old bonds and the refunding securities which were issued in lieu of them?

A. I have Mr. Adams, and have it here (producing same and handing it to counsel).

Mr. Adams:

We would like to file that as Petitioner's Exhibit No. 53.

(There being no objection to the instrument, the same was admitted and marked in evidence as Petitioner's Exhibit No. 53.)

(Witness withdrawn for the purpose of taking the testimony of the next succeeding witness.)

1478 WILLIAM J. HESTER was called as a witness on behalf of the Petitioner, in Rebuttal, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:

Q. Mr. Hester, will you give your full name and residence and present occupation?

A. My name is William J. Hester, and I am treasurer of the University of Miami.

Q. How long have you been treasurer of the University of Miami?

A. I assumed that office December 1st of this year.

Q. What connection if any have you had with the University of Miami prior to that time?

A. I was first employed by the University in June, 1934, as an instructor in the law school, and at that time took over some of the legal matters, as counsel for the University. I have been counsel for the University since 1934. I was, of course, familiar with the business transactions from the point of view of counsel since that time. I

assumed the office of business manager during the past summer, and have at all times continued the teaching of law in the law school there, in addition to, as I say, acting as counsel, and part of the time as business manager and treasurer.

Q. In the past few years have you had occasion to make a study of the records of the University and other data to determine statistical facts about the University and its creation and progress and development?

A. I have. If you will permit me, I would like to go back and add something to the first answer first, before I answer this.

Q. Yes, sir.

A. I would like to say in addition to those functions I have acted in an administrative capacity during the last four or five years, and have assumed the administrative control of the University during the summer of the last two years. Now, of course, it was necessary for me at all times while I was acting in an administrative capacity to keep abreast with the development of the University, its financial position and its business functions, as well as its academic functions. It was more or less necessary for me to do that while I was acting purely as counsel for the University. I have made studies and prepared—I might say I prepared all studies of the financial position of the University during the last two years, or three years, I should say.

Q. Have you studied the records of the enrollment?

A. Yes.

Q. And the different classifications of work, and so forth?

A. Yes.

Q. Have you prepared a written statement of the result of those studies covering the period from the incorporation of the present University down through the fiscal year, August 31, 1941?

A. Yes.

Mr. Adams:
We offer that in evidence as an exhibit.

(The Witness):
A. This is the study that I prepared.

Mr. Berry:
If the Court please, we object to the introduction of the record on the ground that it is immaterial at this time. As we understand, the one problem here is the donation or gift or payment, whatever you might call it, of so much a year by the City of Coral Gables to the University of Miami. Now, their ability to receive this money and their need for it does not seem to me to have any bearing on this at all. It is purely a question of the corporate powers of the City of Coral Gables which authorize that payment, and to start now and go into the study of the University of Miami, it seems to me it is uselessly encumbering his record and will serve no useful purposes.

Mr. Gibson:
I wish to further object on the grounds that the question of whether or not the donation on the part of the City of Coral Gables to the University is strictly a legal question. If they have the right to make the donation, the necessity for the donation is a prerogative of the City Commissioners and can't be impeached unless gross abuse is shown of their discretion, and therefore any testimony on the part of this witness as to the necessity of the money for the University is immaterial and I don't think any of us ever saw a University except possibly Duke that didn't need money. The only question is whether or not they have got the right to give the University the $25,000.00, and if they have the right to do it, the necessity of it is determined by the City Commission.

The Master:

It seems to me, gentlemen, that that point is probably well taken, but I will reserve my ruling on the admission of this document until I have had a chance to read it.

Mr. Walton:

May we reserve our cross examination on it until we have studied it?

(Discussion had, off-the-record.)

Mr. Adams:

If Your Honor please, the purpose in offering this is that a number of the authorities that approve such donations approve them on the premise of the factual situation existing as to the importance of the University to the community, and what good it does to the community, and it is to furnish those factual grounds to bring this picture under those authorities that we had this evidence prepared and presented in this form.

(Further argument, off-the-record.)

Mr. Adams:

In this connection, I have another question I would like to ask Mr. Hester.

Q. Mr. Hester, from your study and knowledge of the financial condition of the University, could the University have continued to operate and reach the status of development as described by you, without this $25,000.00 contribution from the City of Coral Gables?

A. No, it could not. If you want me to explain that, I can.

Q. I wish you would.

A. I would say that—I am not in a position to say that the University would have absolutely failed and gone out

of operation had it not received a donation or donations from the City; I couldn't answer that, because it would only be an opinion, and I don't know. I just wouldn't be able to say whether it would have folded up or not. On the other hand, I can say that the University could never have developed, if it could have stayed open, to the point that it has developed without the aid of the City, as the aid has been given during all these past years.

(Further argument presented, with citations in support thereof, which was off-the-record.)

The Master:
The objections are overruled and the document is admitted in evidence as Petitioner's Exhibit 54.

(Instrument admitted and marked in evidence as Petitioner's Exhibit No. 54.)

Mr. Adams:
You may cross examine Mr. Hester.

Mr. Walton:
No questions.

Mr. Berry:
No questions.

Cross Examination.

By Mr. Gibson:
Q. What is the area occupied by the University in the City of Coral Gables?
A. Do you mean by that how much land do we hold and occupy?
Q. Yes.
A. Or how much do we hold?

Q. How much do you hold and occupy; divide it. How much do you own or have under contract to purchase?

A. I can only estimate that. My estimation would be approximately 50 acres.

Q. And that's more or less centrally located in Coral Gables?

A. Most of it is not.

Q. Most of it is not?

A. Something in the neighborhood of 45 acres is located in the south part of the City of Coral Gables.

Q. What are the value of your buildings?

A. I can't answer that without referring to the records.

Q. Can you give it to us approximately, from your recollection?

A. You mean my opinion?

Q. Yes.

A. That is, the buildings with the land they are located on?

Q. Yes.

A. I would say approximately $600,000.00, though I may be considerably in error.

Q. Do you have any idea of the value of the personal property and equipment of the University?

A. I would estimate that at somewhere near $400,000.00. That's purely an estimate.

Q. Do you have driveways and roadways and walkways in the area of land occupied by the University, and lamp standards?

A. We have walks privately constructed, no driveways, and no lamp standards other than those located on the public streets.

Q. Who maintains your walks?

A. We do. You are referring now to those on the property owned by the University?

Q. Yes.

A. And not sidewalks publicly constructed on public streets?

Q. As a matter of fact, your buildings are scattered through city blocks?

A. That's right.

Q. And cut through by public streets and sidewalks to a great extent, are they not?

A. That's true. It is not a campus type development, if that's what you are getting at.

Q. That's what I'm getting at.

A. Yes, sir.

Mr. Gibson:

That's all.

Mr. Adams:

We have no further questions.

(Witness excused.)

1485 G. N. SHAW was recalled as a witness on behalf of the Petitioner, and being still under oath, testified as follows:

Direct Examination (Resumed).

By Mr. Adams:

Q. Mr. Shaw, Mr. Gibson just asked Mr. Hester what other assistance and contributions the City had made to the University of Miami, and his answer was not very definite. Can you answer that question, other than the $25,000.00 donation that has been testified to?

A. I can say, Mr. Adams, that with the exception of such assistance as we might give any other civic organization, such as our Womans' Club or our Boy Scouts, in some special function such as for instance the cleaning up of grounds after the University has had a bonfire or something of that kind, we give them nothing. We, as a

matter of fact, charge them for any special requests that they may make. Last year I believe that they asked for the sodding of a block and certain parkways in the neighborhood of the main buildings, and they paid to my recollection something over a Thousand Dollars for that work, and there have been other instances where they have been given services of that kind and charged for it. We for some time furnished the buses for the transportation of the football teams, and the other University activities, and when we did we billed them and secured payment for the chartering of those buses, so that there has been in reality no assistance other than the appropriation.

Mr. Clarke:

I have a question I would like to ask. It may be in the record already. Are they granted complete tax exemption or partial tax exemption on any or all of the lands they occupy or own?

A. That is correct, sir.

Mr. Clarke:

Which is correct?

A. Complete. They are granted complete tax exemption.

Mr. Clarke:

On all they own?

A. Yes, sir.

Mr. Clarke:

Whether it is used by them now or not?

A. No. There is a part of the land to which they do not have clear title. There is still a cloud upon the title, and that we are assessing because we do not wish to have any person who may subsequently repossess that land to secure the advantage of the exemption to which the University is entitled.

Mr. Clarke:
That's all.

By Mr. Adams:

Q. Mr. Shaw, do you recall your Exhibits 35, 37, 38 and 39, showing certain comparative tax data between the City of Coral Gables and other cities in the metropolitan Miami area?

A. Yes, sir, I do.

Q. And do you recall the testimony of the city officials from these other cities given in this case after those exhibits were prepared?

A. Yes, sir.

Q. Have you rechecked those exhibits, your Exhibits 35, 37, 38 and 39, to see whether they accurately reflect the data testified to by the various city officials?

A. I did so check, Mr Adams, immediately after their testimony, and found them to be O. K.

Q. Now, Mr. Shaw, have you made any study of the zoning in the towns of Miami Shores, and Miami Springs, and Surfside?

A. I have, Mr. Adams. I made a zoning of—I made a study of the zoning maps of those cities, in connection with the latest available tax rolls of those cities, and have here a statement secured from those sources which shows the minimum requirements of zoning in the several cities, the computation of the minimum value where the zoning is by cubic foot content of the buildings, the number of remaining vacant lots in each of the cities zoned for each of the particular building requirements, and in the minimums, the number of potential future buildings which might be put upon those lots, figuring two lots per building, which is extreme, to say the least; the probability is that it will not average more than one and one-half lots per building, so that the number I have shown is conservative; and then the potential minimum value of the future buildings which can occupy that vacant land. That in-

formation is shown for each of the cities of Miami Shores, Miami Springs and Surfside, which we contend are our most direct and prominent competitors.

Q. Have you prepared a chart showing that data as to those three cities?

A. Yes, sir; I have it here (producing same).

Mr. Adams:

We offer it in evidence as Petitioner's Exhibit No. 55.

Mr. Berry:

I would like to ask him a few questions for the purpose of determining the admissibility of this proposed exhibit.

Mr. Adams:

Go right ahead.

Examination.

By Mr. Berry:

Q. Mr. Shaw, on the left hand column of this proposed exhibit you have got "vacant lots zoned for minimum building content". What does that mean?

A. The general practice of zoning in the Miami area, and the practice originated, as a matter of fact, in Coral Gables, is to zone not by value but by either the cubic content of the building or the floor area. These three cities of Miami Shores, Miami Springs and Surfside use the cubic content area. They require for residence, apartment and hotel areas a building of not less than a fixed and prescribed minimum cubic content. The figures in that column were secured from the zoning ordinances of these cities and from the maps which they had prepared with and from those zoning ordinances.

Q. Well, now, on your extreme left you have "Residence, single family"; then you have six figures on esti-

mated building value at 35 cents a cubic foot, which six figures range from $1,500.00 to $4,500.00, with no cubic feet opposite them. Why is that?

A. You have caught me in an error, Mr. Berry. I prepared this some time ago. I had forgotten that the Town of Miami Springs does not follow that system, and does zone as is indicated in the second column by actual dollar value. Those figures relate to the areas within Miami Springs zoned for those particular dollar minimums where those minimums do not coincide with the calculated cost of the cubic content minimums in the other cities.

Q. Well, I must confess I am still wholly at loss here. Come down a little further. You have got 13,000 cubic feet.

A. Yes, sir.

Q. Is there a building restriction that limits them to 13,000 cubic feet in construction in Miami Shores section?

A. Yes, sir. In Miami Shores no single family residence can be built of less than 13,000 cubic foot content.

Q. And if you built one of that size it must cost $4,550.00 or more?

A. No; that is a calculated cost. I have used in calculating that cost, thirty-five cents per cubic foot, which is low for this area and for the type of construction required in these cities.

Q. Well, do you mean to say that 35 cents is not required?

A. No, sir, it is not required. That's what we have found to be a low cost for such construction.

Q. Well, what reference, then, has 35 cents to Miami Shores if they don't require it?

A. We are talking now—that is simply a computation, Mr. Berry, from the cubic foot figures of Miami Shores.

Q. Well, do I understand you to say that Miami Shores states that no residence and house for single family shall be erected that contains less than 13,000 cubic feet?

A. In particular areas, yes.

Q. In particular areas. Now, what does this mean, that you have got a single family residence down here at the bottom of 40,000 cubic feet?

A. Other areas require other minimums, as shown by the several figures in that first column.

Q. Well, does each one of these figures represent a different area, then?

A. That's correct.

Q. Now, the estimated cost is simply your estimate and has nothing to do with the cost required by Miami Shores, for instance?

A. Miami Shores does not, and neither does Coral Gables require any cost figure. That figure of 35 cents was used by me after a conference with our own building department and independent builders to determine what would be a conservatively low cubic foot cost for building in these cities.

Q. Now, the next column there is "number of lots". Does that mean that you took a map or some other record and counted the number of lots that were zoned in Miami Shores, to show that that number of lots was still vacant and available under those restrictions?

A. I did, Mr. Berry; either by me or under my direction, maps were prepared which showed all of the remaining unimproved lots in these three cities. Those maps were then marked with symbols or with colors to denote the various zoning requirements of the several neighborhoods. We then counted the lots in each zoning classification.

Q. Now, the next column is "potential number of buildings" What does that mean?

A. As I said before, we assumed—we took the extreme assumption that each new residence would use two of the remaining vacant lots. You will notice that that column is simply one-half of the number appearing in the "vacant lot" column except in the case of business and industrial

buildings; there we used one lot per building, which is usual.

Q. In other words, this potential number of buildings under Miami Shores is merely your individual guess of how many buildings may be erected there?

A. Yes, sir; a conservative guess.

Q. And over what period of time does that guess extend?

A. I would not be able to say how long it will take for any of these cities to reach their full construction.

Q. "Potential minimum value of buildings"; is that taken by multiplying the number of cubic feet against the 35 cents on the number of lots you estimate will be built on?

A. The number of buildings I estimate will be built, yes, sir.

Q. And as to Miami Springs and Surfside, are your computations the same?

A. Except as to Miami Springs; as I have mentioned, the zoning is by dollar value, and there has been no computation necessary as to the minimum value of the buildings.

Q. Well, you do put "potential minimum value of buildings" there, don't you?

A. Yes; but I say, that has not been by computation at 35 cents per cubic foot.

Q. Well, is that just merely your guess of what those buildings will probably be worth?

A. That is my calculation, based on the number of buildings as shown by the column, in conjunction with the number of vacant lots and the minimum values stated by their zoning ordinance for each of those buildings.

Mr. Berry:

If the Court please, we object to that. He can show, of course, the number of lots available and the zoning restrictions on those lots, but I think his own guess as to

what may be built on them in an undetermined period of time serves no good purposes that I can see.

Mr. Gibson:

I would like to ask Mr. Shaw a question here.

By Mr. Gibson:

Q. What are you trying to show? What are you trying to prove by this exhibit?

A. Hadn't you better ask counsel that question?

Q. No; you are the one that prepared the exhibit.

A. All right. Mr. Gibson, this exhibit was inspired by a request by Mr. Carson that a study be made.

Mr. Carson:

Just a minute; I would like to get him straight on that. I asked for the facts and not the conclusions.

The Master:

Let the witness proceed.

A. In which he asked, as he said, for the facts, which are represented by the first and second columns of this exhibit—by the first, and a portion of the second column of this exhibit, a portion of the second column being my computation at 35 cents per cubic foot. The facts for which he asked also appear in the first column under each city name. It was my own idea to carry the purely mathematical computation further in the determination of what might be the future value of buildings in these cities as determined from their zoning ordinances, matters of fact, and the number of vacant lots, matters of fact. There are elements of judgment in the 35 cents per cubic foot, but I think we could very easily bring in any number of competent builders who would prove that that figure is low.

Q. That doesn't answer my question. What is the exhibit intended to prove? What is it intended to show?

A. I am getting to that. We could also, I think, prove that my estimate of two lots per building is fairly conservative, and therefore the number of potential buildings in these cities and their value as stated here is less than will no doubt actually be the case. The exhibit simply amplifies and clarifies the amount of competition that these three cities will be to the City of Coral Gables in its future development, particularly in view of the fact that these three cities have a tax rate less than half that of Coral Gables.

Q. In other words, it just simply shows that there are vacant lots in these other towns, and if they were all built on it would cost so much money; is that it?

A. No, sir; it just shows—well, I can't start my answer just that way. In order for Coral Gables to pay its creditors, Coral Gables must grow. In order to pay its creditors, Coral Gables must get the lion's share of the type of building to be expected in the next thirty-six years, a type of building possible in Coral Gables to be expected in this area in the next thirty-six years. These towns are similar to Coral Gables, as also are certain areas of Miami and Miami Beach. We have here three cities—

Mr. Gibson:
That's all right; you needn't go on.

The Master:
Let him go on.

Mr. Gibson:
I'm filled up; I can't take any more.

A. (Continuing) We have here three cities that have capacity for more than half of the building that will be

necessary in Coral Gables for us to conform with our schedule under Exhibit 27.

Q. You didn't take into account any of the unincorporated lands around Dade County, did you?

A. I know of no way of doing that, Mr. Gibson, but I think if we could do that we could make such a showing that it would clinch our case.

Mr. Gibson:

That's all.

By Mr. Carson:

Q. Mr. Shaw, did you also prepare a schedule of Coral Gables giving the same information?

A. Exactly the same manner of preparation and similar content for the City of Coral Gables.

Q. Do you have a copy of that?

A. Yes, sir, (handing same to counsel).

Q. You say it is prepared exactly the same?

A. Along the same line of procedure, yes, sir.

Q. In other words, if it were all on one exhibit it would simply be a fourth city?

A. That's right.

Q. Why, in the exhibit showing the zoning restrictions of the City of Coral Gables under the business and industrial section, do you show the number of lots at 3133 lots, and then the number of potential buildings at 1826, whereas in the other three cities you have shown the number of lots, for instance in Miami Shores, at 107, and the number of buildings at 107. Why did you not carry out that same analysis in the City of Coral Gables, if it was to be comparable figures?

A. Perhaps I should have, Mr. Carson, but the business lots in Coral Gables are in the main 25-foot lots, and the count was made on that basis. The business lots in the main in the other cities were 50-foot lots, and we used the 50-foot basis with them.

Q. That's just another one of your guesses or calculations as to in the main?

A. No, sir, not a guess or calculation; as a result of the study of their maps.

Mr. Adams:

Wasn't that to get the two calculations on the same basis as to the business property?

A. That is right. In other words, all of the calculations presume fifty feet for each business building, and 100 feet for each residence building of any type, whether single family, duplex or apartment or hotel, but the only thing that I did not take into account was the irregular lots; some of the lots, of course, are 55, some 60s and some 40s; there are no great number of those, and where they approximated 50 feet, we treated them as such.

Mr. Carson:

That's all.

By Mr. Clarke:

Q. Mr. Shaw, on both of these schedules are all of the lots in the entire cities included?

A. In the City of Coral Gables we have only included the property north of Sunset Road. The property south of Sunset Road, while a very small portion of it is platted, it remains as low and unusable land, and a great deal of it is acreage and we have no idea how it will be developed in the future. Now, that land has not been taken into account for that reason, except by reference to so many acres of unsubdivided land, in any of the City of Coral Gables exhibits.

Q. Do you even refer to it in your City of Coral Gables?

A. We have referred to it from time to time.

Q. But it is not included on this?

A. It is not included on there, no; that's the subdivided portion of the City comparable to the subdivided portions of Miami Shores, Miami Springs and Surfside.

Q. These two compilations ignore every other fact except the number of lots in the city; isn't that correct?

A. No, I don't think so, Mr. Clarke.

Q. Well, is it based on any other factor than the number of lots?

A. The number of lots and the zoning ordinances.

Q. The number of lots zoned at a certain price; is that it?

A. That's right.

Mr. Clarke:
That's all.

By Mr. Carson:

Q. Mr. Shaw, the other cities which you have previously stated were in competition with Coral Gables do not have comparable building restrictions, do they?

A. Yes, sir.

Q. Comparable restrictions to those set out in these tables?

A. Yes, sir.

Q. Are they not lower?

A. What?

Q. The minimum is lower. I am not talking about these three cities, but I'm talking about the others you have not included in these.

A. Oh. These four cities are the only ones which are uniformly zoned. Now, there are the municipalities of Miami and Miami Beach which are zoned equally with these, but that's a matter of subdivision. Perhaps, and no doubt there is as much of Miami or Miami Beach, or more of Miami and Miami Beach that is directly in competition than there is in these cities, but we have no means

of locating it exactly and tabulating it, without considerable work.

Q. Mr. Shaw, is it not true that in communities other than—communities surrounding Coral Gables other than the three included in this tendered exhibit, that the building restrictions in those communities on the whole are much lower than the figures in this—than the minimum figures in this exhibit?

A. That is true, Mr. Carson, as to the surrounding communities or cities not mentioned here as to the municipal building restrictions, but practically all of those cities contain subdivisions which are restricted by covenants in deeds or other means fully as well as Coral Gables and the other highly restricted cities.

Mr. Carson:
That's all.

Mr. Berry:
If Your Honor please, I object to the exhibit on the ground I have indicated, and move that all the testimony be stricken as not reflecting on any issue in this law suit. The facts as well as the restrictions may be put in, but the guess as to the future, and how many buildings are going to be erected and all that, I think it is very far afield.

The Master:
I'll let the exhibit go in for what it's worth. The objection is overruled; motion denied.

Mr. Adams:
Now we offer the exhibit, the compilation of Coral Gables data, as Exhibit No. 56.

Mr. Berry:
The same objection goes to that exhibit.

The Master:

Objection overruled.

(Thereupon the said instruments were admitted and marked in evidence as Petitioner's Exhibits 55 and 56, respectively.)

Direct Examination (Resumed).

By Mr. Adams:

Q. Mr. Shaw, do the schedules marked Exhibits "A", "B" and "C" attached to the Petition filed in this cause completely and accurately describe the indebtedness of the City which is sought to be composed in this proceeding?

A. They do, Mr. Adams, with the possible exception that the figures as to interest coupons based upon a physical audit of the coupons which have been received by the City as a result of payments, purchases and what have you, over the life of the issues, that physical audit by a representative of my office and the firm of Pentland, Purvis, Keller & Milton; it involved many, many thousands of coupons, and I think the best possible human accuracy was used in the audit; it may be that there have been minor errors or transpositions of numbers of coupons, but aside from that—and those errors would be very slight —and easy to overcome—and aside from that I think that the exhibits are thoroughly correct.

Q. Mr. Shaw, do you recall and are you familiar with the Defendants' Exhibit 37 filed by Mr. Donehoo showing a spot check of certain lots, and a comparison of the sales price to the assessed value of those lots on the 1940 tax roll of the City?

A. I am. I recall the exhibit, Mr. Adams.

Q. Did you check the assessed value on the 1940 roll of the item on that exhibit showing the Lots 5 and 6, and 9 and 10 of Block 124, County Club 6?

A. I did, Mr. Adams. The exhibit shows an assessed value of $368.00; the tax roll assessed value was $2,440.00.

Q. Now, Mr. Shaw, will you define for us what you mean by a weighted average?

A. A weighted average, Mr. Adams, is a means of arriving at an average where the elements that enter into the articles or values involved are of varying characters or values. For instance, it would be rather futile to pile up the coins that each of us have in our pocket and average that number of coins; that would mean nothing. Now, if we reduced each of those coins to some common denominator and took the average in terms of money, then we would have something.

Q. Now, taking your data from Defendants' Exhibit 37, have you made a compilation of the simple average of the sales price and assessment value as to County Club Section 2, and the Biltmore Section, and the weighted average of those two sections?

A. I have, Mr. Adams.

Q. Will you please explain that?

A. Yes, sir; (producing schedule and distributing copies to counsel). From Defendants' Exhibit 37, Country Club Section 2, represented by one sale, shows an assessment ratio of 122.4%; Biltmore Section, represented by five sales, shows an assessment ratio of 80.1%, by simple average. Again by simple average, the combination of those two sections produces a sales price of $15,300.00 and an assessed value of $12,645.00, or a simple average of assessment ratio of 82.6%. Now, using a weighted average, we find that Country Club Section Part 2 had a total vacant land value of $108,055.00. To reduce this to the indicated level of assessment shown by Defendants' Exhibit 37, we would subtract 18.3%, making an adjusted assessment of $88,281.00. For the Biltmore Section—

The Master:

Just a minute. Why do you deduct 18.3%?

A. The assessment for Country Club 2 was 122.4% high of the sales figure shown by Mr. Donehoo. Now, on the face of it, it might look like you would deduct the 22.4%, but you would have to go a little further than that, and determine the percentage of the assessment to be deducted to bring it down to the Donehoo level. In other words, Donehoo has used the ratio of the assessment to sales; to make this change you would have to use the ratio of sales to assessment; just the opposite.

Mr. Clarke:

Where do you get the 18.3? Subtract what from what, or dividing what into what?

A. No. Donehoo's percentage was taken by dividing the $900.00 sales price into the $1,102.00 assessment price to show the percentage that the assessment—the higher figure bore to the sales price, the lower figure. Now, if you are going to adjust this by deduction from the assessment, then you must determine the percentage of the assessment that is in excess of the proper assessment or sales price.

Mr. Clarke:

You divide 1102 into 900, then?

A. That's correct. As to the Biltmore Section, with a total vacant land value of $342,470.00, there would have to be an addition of 24.7%, bringing the adjusted value to $427,060.00. The total of our present assessed value of those two sections is $450,525.00. The value revised as per Exhibit 37 on a weighted basis would be $515,341.00, so that the percentage of error in those two sections combined would be 87.4% on a weighted basis, and 82.6% on the simple basis as first used. Now, carrying that farther, and using the same Biltmore Section, but another section as its companion, again we have the Biltmore Section with 80.1% simple average assessment ratio, and Country Club 5 with a simple average assessment ratio of 125%. The

combination of these two sections gives us $15,600.00 sales price for the two, and an assessed value of $13,043.00 for the two, which gives a simple average of 83.6%, only 1% different from the previous example. Now, again to a weighted average, and adjusting the value of Country Club 5 by the substraction of 20% to give $252,307.00, and adjusting the value of Biltmore addition again by the addition of 24.7% to give $427,060.00, we have a combined revised assessed value of $579,367.00. The present assessed value is $657,853.00, so that the percentage of present assessed value to revised value in accordance with Exhibit 27 is 113.5%, and in this combination we have an underassessment, whereas in the previous example we had an overassessment, and yet by the simple average we are practically the same. Now, that same thing would hold true with any simple average of the relation of sales price to assessed value of vacant lots unless, of course, every lot in the Gables were included. The same would hold true to a more or less degree.

By Mr. Gibson:

Q. Are you the tax assessor in Coral Gables?

A. No, sir, I am not, but I have—

Q. Have you ever been tax assessor in any other community?

A. I have never been a tax assessor, but I have had to study tax assessments.

Q. Have you ever made a living as an expert on evaluating real estate properties, that being your particular duty?

Mr. Adams:

Wait one second. What is the purpose of your examination, Mr. Gibson?

Mr. Gibson:

I just want to see if he is qualified to give this.

Mr. Adams:
His qualifications have already been gone into some time ago, and passed on, I think.

Mr. Gibson:
Not for this.

Mr. Adams:
You questioned him then.

Mr. Gibson:
Not for this.

Mr. Adams:
I think that has been established heretofore.

Mr. Gibson:
I don't think this witness is qualified to come in here and offset an expert witness, particularly one you employed yourself when he was working for you.

The Master:
The witness is qualified.

Mr. Adams:
We offer this calculation in evidence as Petitioner's Exhibit No. 57.

The Master:
The exhibit will be admitted.

(Thereupon, the instrument was admitted and marked as Petitioner's Exhibit No. 57.)

By Mr. Adams:
Q. Mr. Shaw, in Mr. Donehoo's testimony he testified that he estimated that a Million and a Half Dollars could

be added to the over-all assessment of lands in Coral Gables in 1940, I believe it was, by increasing the land values alone in certain designated areas. Those designated areas were part of the business district on Ponce de Leon Boulevard, Country Club Sections 3, 4 and 6, and a designated portion of the canal frontage. Have you examined the assessment roll for 1940 and taken off the vacant and unimproved lands total assessed value on that roll in those areas that he thought could be increased?

A. I have, Mr. Adams.

Q. Have you applied to those totals in those various areas the indicated percentage of increase in those sections as shown in Defendants' Exhibit 37?

A. I have.

Q. As a matter of mathematical calculation, using the percentages shown is Defendants' Exhibit 37, how much increase does that give you in the tax roll of 1940 in these limited areas which Mr. Donehoo testified he thought were low?

Mr. Walton:

I object to the question on the ground that the formula proposed by counsel relates only to the unimproved lands in the areas referred to, and does not take into consideration all lands in those areas.

Mr. Adams:

This is testimony in response to Mr. Donehoo's testimony, and Mr. Donehoo's testimony was that the increased assessment values could be shown by increasing only the land values in those areas by a Million and a half.

Mr. Walton:

Yes; but that takes into consideration lands which sit under buildings as well as unimproved lands.

Mr. Adams:
I didn't so understand it.

(The Witness):
A. He testified "vacant lands".

(Argument had, off the record.)

The Master:
Objection overruled.

A. Using simple averages of ratio of assessment as shown by Defendants' Exhibit 37 for these sections, I find a possible increase of $636,593.00. Now, I think it is only fair, Mr. Adams, to say here that Mr. Donehoo confined his comments to five or six sections. I recently made a study of all of the subdivisions of the City to determine what were the rates of growth of the several subdivisions during the last ten years. I believe that approximately half of the subdivisions, and these which Mr. Donehoo mentioned are the outstanding ones, exceeded the average rate of growth. The other half of the subdivisions, which includes the old Granada section and some of the original sections which have been more or less classified by the old type of houses in them, fell in some cases far below the average rate of growth. Now, there may be necessary enhancement in some of these outstanding sections, but it certainly is indicated there is necessary revision and reduction in some of those older sections, because they are beginning to stagnate, you might say, and I have no doubt whatever that a thorough re-assessment of the City would produce a reduction of some of those older sections to the same extent as is indicated here, or perhaps to a greater extent than is indicated here for the more progressive sections.

Q. What is the total assessed value of vacant land on the 1940 assessment roll?

A. $6,023,090.00.

Q. And the total assessed value of all real property on the 1940 Roll?

A. $25,000,000.00.

Q. Now, what percentage of these two amounts is this indicated increase of $636,000.00?

A. The increase would be approximately 10.6% of the vacant land value, and approximately 2.5% of the total value.

Q. Now, Mr. Shaw, Mr. Donehoo in Defendants' Exhibit 46 testified to the result of some spot checks which he made in the City of Sanford and the City of West Palm Beach, to show the relation between sales prices in those two towns of certain properties that were assessed, and the assessment value of those two properties. Have you made any study, spot check study in the City of Sanford to compare ascertained actual values of real properties that are on the assessment roll for 1941, and a comparison of them?

A. Yes, sir, I have.

Q. Will you please explain the comparison, and what the net result in percentage of assessment value to the actual value is?

Mr. Berry:

If Your Honor please, I think that's objectionable unless he shows a little more basis for his spot check.

(Discussion, off the record.)

The Master:

Proceed, Mr. Shaw, and make your explanation.

A. Mr. Adams, I went to Sanford and spent several days attempting to make the check by the usual method of sales, but I found so few sales that that was ineffective.

I then took the building permits amounts for all construction from February, 1938, to September 19, 1940. Only 33 buildings had been built. To the building permit amount—and I might say that I discussed those amounts with the City Clerk and the City Building Inspector and went over them with them and viewed the building and talked to some of the owners and builders—to the building permit amounts I added the Sanford assessed value of the lots used in those buildings for the last year for which they were assessed as vacant properties; that was the only means I had of securing the land value; that produced a total building and land value for these 33 cases of $125,230.00. The assessment of those same properties was $85,010.00, as shown by the 1941 roll, and the percentage of assessment by simple average would be 67%.

Q. Now, Mr. Shaw, have you made any spot check study in the City of West Palm Beach?

A. I have, Mr. Adams.

Q. Will you please explain what you studied there and the source of your data?

A. I found in West Palm Beach that the tax assessor's office keeps a very complete and up-to-date record of the sales and transfers of all real estate, and that there was obtainable from his office the same information that would be used by any assessor or appraiser in making such a spot check, and that his information was secured from the same source as would be used by an assessor or appraiser. I therefore took 247 parcels of West Palm Beach, Florida, real estate from the assessor's books, showing the amount of sale, the amount of the assessment, the date of the sale, the year of the assessment being in all cases 1941, and the date of sale running from late in 1937 to 1941. Those 247 parcels showed a simple over-all average of 76.7% I broke that down further into the averages for the properties in that list determined to be business improved, business vacant, residential improved or residential vacant, and

found these percentages. The business improved, 76.8%; the business vacant, 77.3%; the residential improved, 77.9%; and the residential vacant, 62.8%.

The Master:

Do you expect to offer these as Exhibits, Mr. Adams?

Mr. Adams:

No, sir. I believe that's all, with the possibility of one question of Mr. Shaw that will take possibly a minute or two tomorrow; and we have two other witnesses ready to go on tomorrow, which are the only other witnesses that we anticipate. You may cross examine.

Cross Examination.

By Mr. Gibson:

Q. I notice in looking at your—shall we call them work sheets?

A. You might call it work sheets.

Q. On which you base your testimony; that in each instance your sale—that in the majority of instances your sales set forth are those— are sales prior—are sales made subsequent to the date of the assessment. In other words, they were made during the year of 1941, whereas the assessment was arrived at, necessarily, in 1940. Are you in a position to say whether or not there has been a general increase in the value of real estate property in West Palm Beach equivalent to 10 or 15% in the last—from we will say the middle of 1940 to the middle of 1941?

A. I am not able to say that of my own knowledge, Mr. Gibson, but—

Q. Are you in a position to say whether or not—

The Master:

Are you through, Mr. Shaw?

A. No, sir. But I made some inquiry as to that as a part of my spot study.

Mr. Gibson:

Well, I object to any information he had on inquiry. He said he don't know of his own knowledge, Your Honor, and that's all I want.

The Master:

Proceed with your questions.

Q. Well, Mr. Shaw, are you—do you know of your own knowledge whether or not these assessments do not truly represent the value of the land as of the date of the assessments?

A. Mr. Gibson, I have simply furnished a spot check for what it may be worth, and I maintain that it is worth just what any spot check is worth.

Q. One example I am talking about is Maca Park where the sales listed were all made, with one exception, in thirty instances, from 1937 to 1939, and your work sheet does not appear to make any allowance for depreciation. Is that correct?

A. Is that vacant property or improved property?

Q. No; it is all improved property.

A. No, my work sheet made no allowance for depreciation.

Q. Are you familiar with the disrepute that that particular situation—that that particular subdivision has fallen into in West Palm Beach?

A. No, and I maintain that Mr. Donehoo was not familiar with the stagnation of certain of the Gables sections.

Mr. Berry:

I object to that last comment.

The Master:

Strike that last comment; that's granted.

By Mr. Gibson:

Q. As a matter of fact, are you not familiar with the fact that West Palm Beach property values acutely accelerated in the fall of 1941 and continued right up until the start of the present hostilities when priorities caused a cessation of building?

A. Well, since my figures were taken in July of 1941, I don't believe that an enhancement in the fall of 1941 would—

Q. The fall of 1940; excuse me.

A. No, I am not familiar with that fact. I am not familiar with West Palm Beach real estate values except to the extent that I made a spot check, a similar spot check to that which would have been made by the average assessor.

Q. Do these items of sale on these work sheets include sales made on properties in litigation?

A. That I do not know, Mr. Gibson, and that would not be known by the maker of any spot check without considerable research.

Q. You didn't determine, then, what were distress sales and what were just open market sales?

A. No.

Mr. Gibson:

That's all.

By Mr. Carson:

Q. Mr. Shaw, I see from your work sheets that you took sales as far back as 1937 and compared them to the assessment roll of 1940. Is that correct?

A. That's correct.

Q. 1941?

A. 1941.

Q. Is it not true that Defendants' Exhibit 37, which was the spot check made by Mr. Donehoo, took sales only of

1940-41 with one exception, which was in 1939, and compared them to the 1940-41 tax roll?

A. That is true. I took that into account, Mr. Carson, but if anything, that would strengthen the exhibit. There has been an enhancement of sales value since 1937, and if the assessment value for 1941 is still below the sales value for 1937, I would say that it was a rather poor showing.

Mr. Carson:
That's all.

By Mr. Berry:

Q. Mr. Shaw, in your exhibit No. 57 you have at the top "C. C.", which I presume is "Country Club"?

A. Country Club.

Q. "No. 2", that's the second block or section in that?

A. The Country Club section was in six parts, and that describes the second part of the Country Club section.

Q. You have got one sale at $900.00. Now, does that same sale appear in Donehoo's exhibit No. 37?

A. Yes, sir.

Q. And the Biltmore five sales at $14,400.00, they appear also in the other exhibit?

A. They are the total of the sales and assessments as shown in that exhibit for that section.

Q. Now, Mr. Donehoo shows the same assessment value that you do, does he not?

A. Yes, sir. My figures are simply the total of his.

Q. And the assessment ratio there is the same?

A. No, because Mr. Donehoo has shown the assessment ratio for the individual lots; in order to apply that to a section I took the simple average assessment ratio for that section.

Q. Now wait a minute, Mr. Shaw; you are getting way ahead of me. You show the difference on this first sale,

the assessment ratio, as 122. So does Mr. Donehoo. Isn't that correct?

A. Yes, sir.

Q. Now, on the five sales you show 80.1%, and he shows about 80%, doesn't he, without going into the fractions?

A. Yes, sir.

Q. So there is no difference between you there.

A. No, sir.

Q. Now you take the next here is the Country Club Subdivision No. 2, assessed value, 1940, $108,055. Now, that's the assessment over-all?

A. That's the total assessment value of the vacant lots in that section.

Q. Are there any improved lots in that?

A. No, sir.

Q. So that is the total section?

A. That's right.

Q. Now, does Donehoo show the over-all assessment in here?

A. He mentions that as the over-all assessment, yes, sir.

Q. I'm talking about Exhibit 37.

A. You mean does he show that percentage?

Q. Does he show the figure in Exhibit 37 of $108,055. as being the assessed value of Country Club Subdivision 2?

A. No, sir.

Q. So that is something you have added that doesn't compare with Mr. Donehoo's exhibit.

A. That is right; that was taken from our tax roll.

Q. Now, why did you subtract from that $108,055. this 18.3%, or in dollars, $19,974.00?

A. In order to reduce that assessment to the level indicated by Mr. Donehoo in Exhibit 37.

Q. Now, where in Exhibit 37 does he subtract 18.3%, or that figure?

A. He does not.

Q. Then how do you say that you are making that agree with his exhibit when it isn't in his exhibit at all?

A. I say, to make it come level—to the level indicated in his exhibit.

Q. Now, where does he indicate that level in this Exhibit 37? I want you to point that out to us.

A. He shows —

Q. Come and point it out to me on the exhibit; don't tell me what it shows.

A. He shows—I'm talking about—just tell me which section you want.

Q. I'm talking about C. C. 2, the assessed value of $108,-055.00 to which you deduct—from which you deduct $19,-000 and some dollars, and you say that makes it compare with Donehoo's. Now, where does Donehoo show those figures?

A. I didn't say that showed those figures. I say he indicated them. He shows, for his example for that section, a $900.00—

Q. Just a minute.

The Master:

Let the witness finish.

Mr. Berry:

He is not answering my question. I asked where on this exhibit does it show; he says it shows somewhere else.

A. I said it was indicated.

The Master:

Let the witness answer the question.

Mr. Berry:

He is not doing it, if Your Honor please; that's why I am objecting to it.

The Master:
Let him answer in his own way.

A. He shows for that section for which there was an assessed value of $1,102.00 a sale value of $900.00; therefore, our assessment was high, obviously. Now, the question is what would have been our assessment had it been correct; so, we deduct the difference, the percentage of difference in the error; his exhibit indicates—not shows, but indicates—and bring the $108,000. actual assessment roll figure down to the level of the sales that he shows. He does not go at it in that way, and that is my criticism of such a percentage as he presents.

The Master:
Now let me ask him a question. How does it indicate that 18.3%? That's the point Mr. Berry is trying to get at, I take it.

Mr. Berry:
I think I have gotten what he has. Let me ask this question.

Q. Mr. Shaw, you have got one sale here shown in the No. 2, and that is shown to be 22% high, or figuring the other way, 18% high, as you want to take it; we are not quarreling about those two. Now, you are taking one sale out of an entire subdivision and correcting that division down as a result of that single sale; is that correct?
A. That is correct.
Q. And you are basing that one sale as against Mr. Donehoo's qualifications in this regard?
A. Mr. Berry, Country Club Section, Part 2, I believe was one of the sections that Mr. Donehoo criticized as being too low. He had one actual sale on which to go. If he was correct in using one sale, then I'm correct in using one sale.

Q. Well, I'm saying that irrespective of what you say Mr. Donehoo's testimony was, that you are correcting your whole list here on the basis of one single sale in this subdivision; is that right?

A. I am not correcting anything, Mr. Berry; I'm simply showing a falacy in the previous method of arriving at it. I'm showing by ridiculous comparisons what might be equally true of broader treatments of it.

Q. I agree the comparisons seem to be ridiculous, but let's go on here. You have the Biltmore assessed at $342,000. and some odd, have you not?

A. Yes, sir.

Q. Now, is that correction made of Eighty-Four Odd Thousand Dollars as a result of the five sales in that section?

A. Yes, sir.

Q. Now, what year were those sales made in?

A. In the year 1940-41.

Q. So you have corrected that entire assessment that you made or that was made for Coral Gables on five sales?

A. Yes, sir.

Q. The next line of figures is the present assessed value of Country Club No. 2, and Biltmore, combined, of $450,000.00; is that correct?

A. Yes, sir.

Q. Now, what do you mean by revised assessed value, C. C. 2, and Biltmore, $515,000.00?

A. That is simply the total of the adjusted values for those sections arrived at by the means we have just discussed.

Q. Now, Mr. Shaw, if I understand that part of this correctly, Mr. Donehoo, in this exhibit here, has got some hundred or more various lots set out here, has he not?

A. Yes, sir.

Q. And you have taken one lot in the Country Club Subdivision and five lots in the Biltmore subdivision which are actual sales, and the total assessed value, and say Mr.

Donehoo is all wrong in all these he sets out; is that what I understand you to say?

A. I have.

Q. All right; that is on actual figures, isn't it?

A. Yes, sir.

Q. Now we get down to this next column here, and the first two lines are the same, are they not?

A. No, sir. No, sir. You misinterpret them, Mr. Berry. The first of these examples is a combination of Country Club 2 and Biltmore section, which shows that the simple average there as obtained by Mr. Donehoo is 82.6%; the weighted average method gives 87.4%. The second example is a combination of Country Club 5, and which is an entirely different section, with Biltmore section, and in the latter example the simple average is 83.6%, and the weighted average is 113.5%. I am showing a discrepancy in a portion of this Exhibit 37, which points to the ineffectiveness of using a simple average for a city composed of a great many lots of different classifications and different values, and perhaps different desirability.

Q. Now, if you don't make quite so many speeches we will get along a little faster, Mr. Shaw. Do I understand that you say that your 87.4% down here is a weighted value?

A. Yes, that is a weighted average.

Q. Now let's see if I understand you correctly on your terms. A simple average is adding a number of factors together and dividing that result by the number of factors entering into that?

A. That's right.

Q. A weighted average is where you use either the same procedure but arbitrarily add to or deduct from the factors, or when you get your simple percentage add to or deduct from that total by an arbitrary method that you have assumed in advance?

A. No, sir, I would put it this way. In a weighted average you reduce all of the valuation factors to a common

denominator, and then secure the actual average in terms of that denominator.

Q. But what is the method of the reduction of the factors to the common denominator? What procedure do you go through to find it?

A. In this particular case we have three different sections; all of them are indicated by this Exhibit 37 to have different relations of sales price and assessed value. Now, what has been done here is to treat each of those sections separately in the light of the relationship between sales value and assessed value shown for that section, not to take the three sections as a whole. They may be entirely different, and lump them together and simply go at it that way.

Q. Now, Mr. Shaw, let's go back again. On C. C. No .2 the first thing, $108,000. is the actual assessed value?

A. That's right.

Q. And you have subtracted your 18%, and your adjusted value is $88,281.00; is that correct?

A. Yes, that's correct.

Q. Now, that is the adjusted factor which would go in to make up your weighted average when you compute your average, is it not?

A. That is correct.

Q. Now, you explained that in each instance you deduct it, but I notice in your next factor you add to it.

A. I don't believe I said "in each instance".

Q. Then I am correct that you arbitrarily add to or deduct from each factor that goes into your weighted average?

A. Not arbitrarily.

Q. Well, you have selected your method of doing this by taking sales prices, if that's arbitrary or not, but nevertheless that's the method you used in this example, so your weighted average in this is by adjusting each factor to sales?

A. Yes, sir.

Mr. Gibson:

Arbitrarily selected.

Q. In C. C. 2, during the period from 1939 until you made this up, were there more sales than the single one?

A. That I don't know, Mr. Berry. I simply took Mr. Donehoo's exhibit.

Q. Now, in the Biltmore, were there more than five sales?

A. That I don't know. Mr. Donehoo tendered that as the sales and I took it as such.

Q. Does Mr. Donehoo show any more sales in C. C. 2 than that?

A. None; no, sir.

Q. Does he show any more in Biltmore than that?

A. No, sir.

Q. Now, in your second one down here you show Country Club 5, a single sale?

A. Yes, sir.

Q. And you follow that out in the same way?

A. That's correct, sir.

Q. And you took Biltmore, five sales, but they are the same five sales, are they not?

A. That's right.

Q. And you worked that out and show a weighted average on that?

A. That's correct.

Q. Now, your contention is that, taking one sale in Country Club 2, and five sales in the Biltmore section, and one sale in Country Club No. 5, is a more correct method than Mr. Donehoo taking a hundred or more lots all through all those sections? Now, just answer that yes or no, and then you can explain it all you want.

Mr. Redfearn:

Wait a minute, about answering that question yes or no.

The Master:

The witness does not have a contention himself. Read the question. (Question read.) Now, if you can't answer that yes or no, you don't have to.

Mr. Walton:

Mr. Berry said to answer it yes or no, and then explain.

A. I don't see how I can answer that yes or no. I do not maintain the correctness of the indications of this Exhibit, but I maintain that it is a more correct method than that of Exhibit 37. I would not rely upon either the number of sales as adequate in both.

Mr. Redfearn:

Aren't the number of sales the same in both?

A. The number of sales are the same in both. If I have used one sale for Country Club 2 and five for Biltmore, and one for Country Club 5, that's exactly the same procedure that Mr. Donehoo used, except that he reached a simple average over the whole, and the intention of this is not to determine the actual level of assessment, but to point out the necessity for going far beyond that simple average.

Mr. Redfearn:

But you used the same number of sales he used in each instance?

A. I used only the sales that he showed, and I used all of the sales in each section that he showed.

By Mr. Carson:

Q. If I understand you, then, Mr. Shaw, you are not contending that this Exhibit 37 of Mr. Donehoo's is incorrect, but simply the examples that you use were incorrectly averaged?

A. No. I'm showing that a spot check of that kind is not a definite and reliable indication, just as you gentlemen successfully showed that in criticizing my spot checks in West Palm and Sanford. What I am criticizing here is the method by which it is done, and I would say that this method, if carried to a sufficient extent, would give you a correct answer. This method would have to be carried to a great majority of the lots in the town.

The Master:

Just a minute. Mr. Shaw says "this method" and "this method"; what method do you refer to when you say "this method"?

A. My first method referred to the weighted average schedule that we are discussing; the second referred to Exhibit No. 37, the simple average.

Mr. Adams:

Defendants' Exhibit 37?

A. Defendants' Exhibit 37.

Q. Mr. Shaw, in Petitioner's Exhibit 57 you have not carried it sufficiently far to ascertain whether or not in Defendants' Exhibit 37 the average reached by Mr. Donehoo is incorrect or correct, merely far enough to in your opinion, in the examples you have selected, to show that he might be wrong?

A. I have made a sufficient study of Exhibit 37 to know that he would be wrong on the whole if the weighted averages were applied throughout. I have not with me any figures of that nature.

Q. You have not, then, reached a total average or an average for the total in your exhibit?

A. Not for the total.

Mr. Carson:

That's all.

By Mr. Gibson:

Q. May I ask you, Mr. Shaw, Mr. Donehoo sets forth 105 properties and 105 sales, does he not?

A. Yes, sir.

Q. And you have selected from that 105 properties and 105 sales these sections where there were only one—you have selected two sections where there was only one sale and one selection where there were only five sales, as a basis of your exhibit, have you not?

A. I did not select them in that way, and with that design, Mr. Gibson. I selected sections which were different as to their nature and as to their relation between sales and assessed value so that I could bring out this point of the necessity for going beyond a simple average.

Q. Well, put it this way, then. You used simply a part—you used simply that part of his exhibit where in two instances there were only one sale and one instance where there were five?

A. Yes, Mr. Gibson, I did, for the sake of simplicity. Other combinations were possible.

Q. And if you had used the whole 105, you would probably have come to a different result, would you not have?

A. Yes, a very different result, but—

Q. That's all.

A. (Continuing) But still not the result that would be obtained by a simple average.

Mr. Gibson:

That's all.

(Witness excused.)

(Thereupon, at 5:15 P. M., the hearing was recessed until the following morning, December 18, 1941, at 10:00 o'clock A. M., at which time the hearing was resumed.)

(The hearing in the above cause was reconvened at 10:00 A. M.; the appearances at said hearing by counsel were the same as heretofore noted, excepting for Mr. W. Terry Gibson, who did not appear at this hearing.)

1529 OTIS SPENCER was called as a witness on behalf of the Petitioner, in Rebuttal, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:

Q. Mr. Spencer, what is your full name and place of residence?

A. Otis Spencer. My residence is 912 Valencia Avenue, Coral Gables, Florida.

Q. How long have you lived in Coral Gables?

A. Approximately twenty years.

Q. How long have you lived in Florida?

A. I was born in Florida; born in Jacksonville.

Q. What business are you engaged in?

A. Real estate business.

Q. And how long and where have you been engaged in the real estate business?

A. I have been in the real estate business since approximately 1910. I have engaged in the real estate business in Philadelphia, New York, Washington, Wilmington, Delaware and Miami.

Q. Where is your office now?

A. In Coral Gables, 2409 Ponce de Leon Boulevard.

Q. Have you been active in the real estate business in Coral Gables for any length of time?

A. I sold property in Coral Gables in September of 1921, when the subdivision was first started, and I have been continuously engaged in the sale of Coral Gables property and surrounding properties since that time.

Q. Now, what other if any work in connection with real estate have you done?

A. Well, I operate as a real estate broker, and as such we do appraisal work, we do location spotting for general stores, make general store leases, do general construction work in a supervisory capacity taking over jobs from the beginning and carrying them on through to completion, we appraise for various concerns that desire out services.

Q. Now, has your appraisal work been confined to any particular area in the metropolitan Miami district?

A. Well, we are the appraisers for the Chase Federal Savings and Loan institution at Miami Beach; our territory that we appraise in lies south of Flagler Street and from the Bay west to the County line; that extends down to the southernmost end of the county. We also are appraisers for the Hartford, Connecticut, Trust Company throughout the State of Florida. We make appraisals for them in various parts of the State where they have property holdings.

Q. Are you familiar with real estate conditions at to markets and growth, and so forth, in Coral Gables, since 1930?

A. Yes, sir.

Q. During the period from 1930 through 1936, what if any effect upon the market of the Coral Gables real estate did the defaulted situation in its bonded indebtedness have?

A. It had a very detrimental effect, due to the fact of the uncertainty of what the tax rate might be, what the tax assessments might by; it made it vulnerable to attack from surrounding real territories when we were in competition; brokers from other territories would use that as a definite argument to a mutual plan to not buy in Coral Gables.

Q. State whether or not in the sale of properties in Coral Gables for the construction of homes, there is competition with any other areas?

A. There has been competition always with other areas. We have a very keen competition with, at the present time, several of our surrounding territories, notably, Miami Shores, Miami Springs, but more Miami Shores than any other particular area or territory of a similar class. Now, the southwest section of Miami offers definite competition, but the restrictions there are not quite as high as they are in Coral Gables.

Q. Now, since the partial refunding of the bonded indebtedness in 1937, has there been any one element involved in the sale that has been a deterent to sale of vacant property for new home construction in Coral Gables?

A. Yes, there has been one outstanding deterent in the sale of property, and that is the fact that our taxes have been consistently so high in Coral Gables that a great many, particularly the speculative builders, will not come into the Gables to build due to the fact that it offers sales resistance to their properties from possible buyers. That sales resistance is not prevalent in certain areas in Miami, and is very definitely off in Miami Shores and in Miami Springs. You see, in Miami Shores and Miami Springs there is very little taxation, and they have no bonded debt to tax the people for. We have been in a position where for a long while, when we had a prospect to purchase a home, regardless of the advantages that we might be able to offer them in a community, living in Coral Gables they always come back with the argument that your taxes are so high that "Mr. Smith from the Beach told us that the tax rate out there was very high". Well, of course, we have to try to offset that one way or another. While it is true that the Beach has a higher millage than we have, the assessed values at the Beach are far lower than what we have in Coral Gables. A comparable home at the Beach, comparing it with one in the Gables, the amount of taxation would be roughly about 50% less than Coral Gables. Those are things that are very detrimental

to the sale of Coral Gables property. If our assessments were lower and our tax burden lower, you would see a greater influx or building—or, would have seen a greater influx of building in the past few years.

Q. Is there any competition between the areas that are not in any municipality and the City of Coral Gables for new home construction?

A. Yes; we have several areas surrounding Coral Gables that are in Dade County and not in any municipality. They refer to a couple of them as "Little Georgia, and you have to kind of think which one they mean when they refer to it. There is one area that lies in the vicinity of LeJeune Road and commences about 150 feet or 200 feet east of Le Jeune Road and extends west to Cortez Street, and from a point about 150 feet or 60 feet north of Majorca Avenue extends to the Tamiami Trail. That area being in the county, it has no city taxes whatever, and in that area there has been in the past three to four years more houses built than has been built in all of Coral Gables.

Q. Does that area adjoin Coral Gables, just across the street?

A. It is bounded by Coral Gables on three sides, the fourth being Tamiami Trail; not only bounded, but the lots in many instances back up against lots in Coral Gables.

Q. Now, are there any other county areas around the boundary of Coral Gables that have in the past few years afforded and enjoyed growth?

A. Yes, there has been several other areas. We have an area down south of Sunset Road. It lies between the City of South Miami and Coral Gables. There has been a number of very large homes built in there, homes costing from Twenty to Thirty or Forty Thousand Dollars. That development has all taken place within the past three years. I have talked to several of the people down there who have moved into that area. They have moved there

from both Coral Gables and Miami Beach, and their principal reason for moving was to get away from high tax rates, and we have one man who is now a resident of Coral Gables, on the Coral Gables Canal, that is moving into that county area, and is at the present time engaged in building a home there and has put his property in the Gables on the market for sale in order to get away from taxation. We have another man who is moving into the area west of Red Road from Coral Gables. He has lived in Coral Gables since 1925, and in fact he built the Biltmore Hotel; Mr. Rodney Miller. He has bought five acres of property, and is putting up a home that will probably cost him $25,000.00. Now, that's the type of people we are losing to those areas to a more or less extent on account of operating costs in Coral Gables.

Q. Well, you say on account of operating costs. Do you mean purely the operating tax, or the total tax?

A. Referring to the tax burden, primarily, when I refer to operating cost.

Q. Now, do you know of your own knowldge whether there have been others who have made a similar move in their residence to the instances you have cited?

A. Yes, I do. I know of quite a few. Mr. McCaddon, who was one of our customers, we erected a home for him in Coral Gables on Granada Boulevard some years ago, five or six years ago; he has moved out on Sunset Road West of South Miami into the county area and built a home there which he is occupying this week. We have numerous other cases where people have moved, people of smaller means, that have moved into the "Little Georgia" area to get away from taxation.

Q. Now, is the existence and functioning of the University of Miami in Coral Gables an advantage and of assistance in the sale of lands for the construction of new homes in that town?

A. The University is definitely an asset from all angles as we see it. It aids us in the sale of property, both

homes and business property. The University brings into our community each year Hundreds of Thousands of Dollars of money that wouldn't otherwise get into Coral Gables and wouldn't be spent there. It enables our business men to pay the rents that they pay, and one of the reasons why they can afford to pay that rent. It brings new families into the area. We do notice this, however, that a great many families will live in surrounding areas and send their children to the University rather than move into Coral Gables, and usually it is because some energetic salesman from another district has told them about the high tax burden in the Gables. I might say that one of the principal things we have to combat in our sale of property is taxation; we are always faced with it.

Q. Well, now, how long has that been the difficulty in your operation?

A. Ever since we got into trouble with our bonds; from that time on we have had difficulty.

Q. Now, state whether or not the University of Miami has any advantages to the City from an advertising and publicity standpoint.

A. Yes, they have one thing alone that we don't look upon perhaps as so educational, but it is definitely promotional; they always have a good football team that produces many lines of publicity every year. That publicity I have noted in the New York Times and similar newspapers, and I think that naturally adds to the value of the University to the City. The University is pretty well known generally now, not only in the United States but also in the South and Central American countries, and it brings Miami and Coral Gables to the attention of the people in those areas.

Q. Mr. Spencer, do you know what the tax millage rate has been in the Gables for the last few years?

A. Twenty-two mills.

Q. What in your opinion would be the effect upon the future growth of the City of Coral Gables of an increase in that millage of from 10 to 15%?

Mr. Gibson:
Just a minute—well, go ahead.

A. The effect of increasing our taxes at all will have a very deleterious effect upon the sale of property. What we need is a reduction in taxation, not an increase in taxation. We have been enjoying some little building in Coral Gables in the last few years which no doubt through the effect of the O. P. M. will be largely eliminated in the future until this War is over, at least, and without continued growth it is going to make it pretty hard for the people to stand any additional taxes. The thing that would make our town grow more than anything else would be to get on a basis of lower taxes rather than increased taxes.

Q. Would an increase of as much as a mill and a half in the debt service taxes over and above what they are on this year's tax levy have any effect on the future growth of the City?

A. Any increase would have its effect. We represent several large owners of property in Coral Gables, owners who have from 100 to 250 Thousand Dollars in holdings there. One of the principal ones that we have done considerable building for in the business section told me within the last thirty days that if anything happens that the City increases the taxes more than what they are now, he will never put any more buildings up in Coral Gables. Now, we have plans at the present time for a hotel to be built there on his property, and he has asked us to hold up on that. He did ask us that some few months ago, pending the outcome of this year's tax assessment; he wanted to see, as he expressed it, how they hit him in the head with taxes this year. That particular person is Mr. Arthur McBride, of Cleveland, Ohio; he owns the building our office is in, the A. & P. Store, the Breeding's Drug Store, and also the Woolworth Store that we are constructing at the present time.

Q. Now, in that connection, Mr. Spencer, have you had occasion to make any study of the population from which business in the neighborhood of the intersection of Coral Way and Ponce de Leon Boulevard draws its business from?

A. Yes, we had to do that in order to establish such firms as F. W. Woolworth Company, and the Atlantic & Pacific Tea Company in that neighborhood. We have found through a survey made of the area that we have a buying population within a two-mile radius of Coral Way and Ponce de Leon Boulevard, of 45,000 people. That buying population is the reason and principal reason that F. W. Woolworth came into Coral Gables. They feel that a town the size of Coral Gables, less than 10,000 people, could not support their store alone with a store in Miami being so close, but with a buying population coupled with the parking facilities that we were able to give them in that location, they feel that it is a wise move on their part. The same thing applies to the Atlantic & Pacific Tea Company. Their trace comes from all over the southwest section of Miami. There is a good deal of trading being done in those stores from South Miami and Coconut Grove, all through the Brickell Avenue area, and even some of the northwest area.

Q. Does that apply to any of the other business developments and projects in the Gables?

A. It would apply to all business in the Gables, because each business benefits by the people who come into the area to shop. I was talking with a druggist yesterday. We have Breeding's on one corner of Coral Way and Ponce, and Dade Pharmacy on the opposite corner; we have a small drugstore down the street. I asked the operator of that store if after Breeding opened his store on the corner it hurt his business; he said on the contrary it increased my business. I said, what do you attribute that to? He said largely because it brought into the territory more shoppers, and the people will always shop around

first from one store and then to another, so that the entire business area benefits directly as the result of the outlying population. If we depended entirely on Coral Gables residents to support our business section we simply couldn't put in the stores that we have there. We are making an investment of considerable money in this new Woolworth building strictly on a percentage lease with no guarantee in anticipation of a satisfactory volume of business. Now, I can't sell my owner that bill of goods without giving him some facts with which to back it up. Consequently, we had to make rather an exhaustive study of the trend of growth, and where we got our buyers from.

Q. Now, in the past four years has the development and construction of homes and business properties in Coral Gables and the Miami metropolitan area been a period of normal, below normal or abnormal growth?

A. We look upon that as rather an abnormal situation brought about largely through the easy financing; people who formerly could not afford to own a home or felt that they couldn't, are buying homes now because of the type of financing that has been made available in those past years. When a man can put down 200, 300 or 500 Dollars and then the balance when they catch him, and then move into a home, it is cheaper than paying rent.

Q. Has the new construction, both in homes and business properties in this area, been in the past four years much in excess of the previous four years?

A. Quite. As a matter of fact, in Coral Gables, in the previous four years, there was practically no building.

Q. Now, in the past four years has Coral Gables gotten its proportionate share of the new home construction?

A. No, definitely. We have several factors that enter into the reasons why. One factor that rather surprises a great many people is why a buyer will pay more money for a similarly located piece of land in any other territory than he will in Coral Gables. That factor is due to the matter of taxation, purely. Speculative builders don't

come into Coral Gables, as a rule. We have been working with them for several years, and this past year is the first time we got any out there.

Q. What about the loan agencies' operations in Coral Gables during the past few years? Have they all operated in Coral Gables on the same basis they have in other competing areas?

A. No. F. H. A. has always felt that Coral Gables was not entitled to as large a percentage of loan as some of the other areas. The Federal Savings & Loan institutions usually run pretty much the same in the various areas; that is, the good areas. Now, on the areas that are not quite so good, they take that factor into consideration. We do that in our appraising for the Federals, but in our appraisal work we find that the vacant land values in Coral Gables are the lowest of anything in the southwest section, and surprising as it may seem in what we might term bad areas, an area for instance south of Coral Way between McDonald Road and Douglas Road where they have had very little zoning and you have shacks alongside of business buildings, and that sort of thing, even in that area the land value per front foot is as high as similarly located land in Coral Gables.

Q. What is your opinion about the prospect for a continuation of the quantity of new home construction in Coral Gables in the future?

A. Mr. Adams, that is one of the things that we are concerned with at the present moment. We don't know how far-reaching the O. P. M.'s orders are going to be. They say they are going to put a limit on homes of $6,000.00, which as we understand it includes the land value. While in our zoning in Coral Gables there are very few sections where a man can't put in a house where his total cost is under $6,000.00 except areas that the better type of resident prefers not to into, and I think it is going to have a very detrimental effect upon new construction in our community. It will, on the other hand, increase the con-

struction, no doubt, if supplies are available, in surrounding territories where the zoning is a little bit lower, but on the other hand, if our interpretation is correct of the O. P. M.'s ruling, until an area is declared a defense area even, then this $6,000.00 is not applicable until it is declared a defense area. While Coral Gables is not a defense area, therefore we cannot look for any relief through the O. P. M. at the present moment, and it is very difficult to obtain materials with which to build. We have had four instances in the past sixty days where people wanted to build homes and couldn't get materials to build them with, and have canceled out the purchase of lots.

Mr. Adams:

That's all; you may cross examine.

Cross Examination.

By Mr. Gibson:

Q. Mr. Spencer, I want to ask you just a little bit about this Miami Springs and Miami Shores area. Do they have any large attractive hotels in either one of those areas, or social centers?

A. No.

Q. Do they have any—

A. I would like to qualify that by saying that so far as hotels, large, attractive hotels they do not have; social centers, yes.

Q. What kind of social centers?

A. Miami Shores has a very find country club, and golf course.

Q. That's the development north of Miami, is it not?

A. The development north of Miami.

Q. Built with W. P. A. money?

A. Well, I'll tell you, I don't know whether it was all W. P. A. money or whether some of the Phipps estate money got tied up in there; I am inclined to think it did.

Q. It wasn't money borrowed from bondholders, though, which they have to pay back?

A. It was built with borrowed money.

Q. Are they defaulting on it?

A. They have been in Court on it. I wouldn't want to say whether they were in default or not. I know they have been in Court with the thing. I didn't follow it closely enough to answer your question.

Q. Now, you spoke of, as I understand it, two different unincorporated areas, one lying, as I understand it, north, and one lying south, the one lying south having in it a number of large homes. In the one lying north, what is the type and class of development?

A. That area is largely built up with homes that have been sold at prices ranging from $3,250.00 minimum to Nine and Ten Thousand Dollars. I would say that approximately 50% of the homes in that area are homes that sold for $5,000.00 or more.

Q. Now, in the large area you speak of in the south, the average development down there, does it have considerable ground around the residences or is it simply city lot sized properties?

A. The more expensive properties are in acreage altogether; the smaller properties are on city lots.

Q. Now, from your experience in south Florida and being in the real estate business a great number of years, is it not a fact that West Palm Beach is faced with the same situation in the Belvedere areas and the Military Trail areas?

A. I am not sufficiently acquainted with the town to answer your questions.

Q. Well, isn't it a fact, Mr. Spencer, that in and surrounding all or most all of the large urban or metropolitan areas there is a nice development around in the unincorporated areas of what we call country homes? There is nothing unusual, in other words, is what I'm trying to bring out.

A. If we were referring to northern areas I would agree with you; if you were referring to Florida areas, I do not agree with you.

Q. The same situation applies in Ocala, does it not?

A. I haven't been in Ocala in four or five years.

Q. Well, the same situation applies in Tallahassee, does it not?

A. Now, you have got me on a point I haven't been to for twenty years.

Q. Well, now, you just testified that in Florida such is not the rule. The same situation applies in Jacksonville, does it not?

A. In Jacksonville you will find outlying areas that are very nice, and you will find some outlying areas that are very bad.

Q. Well, that same situation applies everywhere else, too, doesn't it?

A. Well, very generally, it does.

Q. The same situation applies in Deland, does it not?

A. Well, Deland, most of the better class dwellings are in the heart of the old incorporated community.

Q. But you have a very definite and delightful development in the rural areas around Deland, do you not?

A. To some extent.

Q. And particularly does not the same situation apply to Orlando?

A. Well, Orlando, I would say, has more of the better class development in the confines of the city limits than in the outlying territory.

Q. Well, that's true of all of them, is it not?

A. Yes.

Q. Now, Mr. Spencer, under your eight mill debt service as you now have, on a $5,000.00 home you have a tax of $40.00. If we increase that a mill and a half, that would make $47.50. Do you think that $7.50 by itself, the $7.50 would keep someone from building a home in Coral Gables?

A. Yes, sir.
Q. You think that would?
A. Yes.

Mr. Gibson:
That's all.

Re-Direct Examination.

By Mr. Adams:

Q. Mr. Spencer, what if any effect upon the payment of taxes by the owners of vacant property does a cessation and a decrease in the quantity of consumption of them by construction have?

A. I wish you would repeat the question, please. (Question read.) It means that the vacant property has to carry a greater proportion of the tax burden which also ends by more taxes going into default on vacant property.

Mr. Adams:
That's all.

The Master:
Anything further from this witness?

(All counsel announced they had no further questions, whereupon the witness was excused.)

Mr. Adams:

In order to shorten the record, I wish to state for the record that the Statutory authority for the actions which the City has taken in handling its delinquent tax assets and the purchase of its bonded obligations, and for the donation to the University of Miami, are the provisions contained in Chapter 13972, Special Acts of 1929, in Sections 7, 7-e, 7-f and 7-h, and Sections 35 and 53 of that Chapter.

Mr. Walton:

When you say that that is the authority, you mean that is the City's contention, don't you?

Mr. Adams:

That's the City's authority—the statutory authority under which we are proceeding.

Mr. Walton:

You mean that's the City's contention, that they say that's the authority.

Mr. Adams:

No; I say that that's the statutory authority, Chapter 13972.

Mr. Walton:

I think if Mr. Adams is going to testify here about what the authority is, he ought to be sworn.

The Master:

I think that that's fairly understandable. Call your next witness.

1549 A. B. MORRISON was called as a witness on behalf of the Petitioner, in rebuttal, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:

Q. Mr. Morrison, will you please state your full name and place of residence?

A. Archibald B. Morrison. Do you want the middle name?

Q. You can use your initials if you want to. What is your age, Mr. Morrison?

A. Sixty-three.

Q. Mr. Morrison, what business are you engaged in?

A. I am engaged in the municipal bond business.

Q. And where is your office now?

A. Congress Building. 1114 Congress Building.

Q. In Miami?

A. Miami.

Q. How long have you been engaged in the municipal bond business?

A. A little upwards of about twenty-six years, I think.

Q. How long have you been in that business in Miami?

A. Well, I have been in Miami almost twelve years; about eleven and a half, here in Miami.

Q. Now, what is the particular type of your business in this field of municipal bonds?

A. Well, we handle municipals, and practically all Floridas. Before coming here I was in the north a great many years, and our business is perhaps of a little different type in that we, I believe, depend on handle, or our customers depend on us for supplying them with information before making purchases, and we buy very little stuff, relatively speaking, from dealers. The bulk of our stuff has heretofore come from accounts where we have had the entree.

Q. Now, in that work is it a part of your business to make studies of taxing districts and municipalities that have issued municipal securities?

A. Yes. That is one of our biggest business getters, in that we keep—we have probably the most complete data file of anybody in the State, and in fact, I believe any place, and the bulk of our business is from those people whom we have dealt with for years and who rely on us for information, and that, of course, means we have got to study the various situations.

Q. What part if any have you taken in promoting or negotiating any refunding plans?

A. We never have actively taken any refunding plan here in this State.

Q. You have taken no part in that field of municipal bonds?

A. No, we have not.

Q. Now, are you familiar with the history of the Coral Gables debt problems?

A. Very familiar, yes.

Q. What was your first connection with that debt problem?

A. My first connection with them was in 1928, in June, when I came down here for the Guardian-Detroit Company, of Detroit. They had handled a great many Coral Gables bonds, and had begun to worry a little bit about whether or not they were going to get the interest, to say nothing of the principal.

Q. Do you know when the first default took place in the Coral Gables bonds?

A. My impression is that it was 1930, but I can't tell you without referring to that. They would have defaulted in 1928 had the Guardian not purchased a large number of refunding bonds.

Q. Were those refunding bonds used to pay—the proceeds of those refunding bonds used to pay the current obligations of the outstanding bonds?

A. They were used to pay off the maturing bonds, yes.

Q. Now, have you had occasion to study the Coral Gables refunding plan of January 1, 1937?

A. Yes.

Q. Were you familiar with the various efforts of the City of Coral Gables to effect a refunding between 1930 and 1937?

A. Yes.

Q. Did you at that time study the details of those various proposed plans?

A. Yes, very thoroughly, because we had customers owning some substantial blocks.

Q. Now, with reference to the plan of January 1, 1937, have you made a complete detailed study of it, and of the conditions of Coral Gables as they effect that plan?

A. Yes, at the time; and I haven't checked on Coral Gables lately as thoroughly, but at that time, yes, and for a year or two after that.

Q. Now, Mr. Morrison, what kind or type of market is there for the Coral Gables refunding bonds?

A. There is a fairly general market. Of course, the bond is traded in rather actively in New York, but it has been our experience that the investor market, that is, the people who buy that for permanent investment, is somewhat limited; you can't sell it to everybody.

Q. Do insurance companies and banks, as a general proposition, buy Coral Gables refunding bonds?

Mr. Walton:

Just a moment, please. If Your Honor please, we object to that as not being in rebuttal of anything brought out by the objecting creditors.

Mr. Adams:

It is in rebuttal to the expert testimony of the objecting creditors that Coral Gables bonds—that there was a good market for Coral Gables bonds, and we would be stampeded with offers to buy them if additional refunding bonds were issued, and that the City had the credit to stand and carry more indebtedness than the refunding plan has for the City to carry.

The Master:

The objection is overruled.

(Question read by the reporter.)

A. No, I think not, as a general proposition.

Q. Now, Mr. Morrison, has the type of market for Coral Gables refunding bonds improved or declined since January, 1930?

A. Well, the market has gone up on them; improved.

Q. Are they on any better standing with the investors?

A. Oh, yes; any bond that has paid interest for two or three years is always in better standing than way back in 1930 when they were in default, and then the whole market has gone up, also, so they have been attractive from the standpoint of yield, as compared to other bonds.

Q. Now, in this refunding bond issue of 1937, is there ample, reasonable or sufficient cushion of safety for the protection of creditors in the debt requirements of this issue?

A. I think there is a reasonable cushion in it.

Q. Will you explain what you mean by a reasonable cushion?

A. Well, by that we mean that there is sufficient taxing power, even in the case of depressed conditions that the City can still go through. That is to say, that any refunding plan, to be successful, has got to take into account good times as well as bad, and must provide a sufficient margin of safety, or cushion as we call it, so that if there are hard times there can still be taxes collected enough to take care of interest and principal.

Q. And you think that the January 1, 1937 plan has only a reasonable margin of safety in it?

A. That's my opinion.

Q. Now, what is your opinion of the chance of the City of Coral Gables continuing to service the refunding bonds of 1937 in the future?

A. I think there is a fair chance of their so doing.

Q. Do you look upon this refunding of Coral Gables as a temporary refunding that will probably have to be re-done in a few years, or as a permanent refunding of its indebtedness?

A. Well, that's something you can't answer. In other words, as his interest rate steps up, there is always a chance that the market will be high enough so that they can refund on a permanent basis. In other words, instead of stepping up to the ultimate 5%, that they could refund it someplace between the present rate and that. Whether they can refund or not is going to depend entirely on general conditions.

Q. Well, now, have the past years from 1937 to 1940 been average years, or below normal or abnormal years in municipal finance circles?

A. Well, they have been decidely abnormal years in that we have had a constant increase in price. Our markets have gone up on all municipals.

Q. Will you please state whether or not in your opinion the Coral Gables refunding plan of 1937 is a fair and equitable plan and for the best interests of the creditors?

Mr. Walton:

If Your Honor please, we object to that as calling for the opinion and conclusion of the witness on a matter in issue in this case.

The Master:

It seems to me that the answer to that question would just have the effect of advising the Master what to decide, and the objection is sustained.

Q. Mr. Morrison, what in your opinion would be the effect upon the City's credit and bonded financial situation of an increase in the amount of its refunding bonds over and above those provided for in the plan of 1937, from approximately 10 to 12-½% of those authorized and proposed to be issued under that plan?

A. Well, I think undoubtedly it would have a bad effect on the City's credit. The debt already is pretty excessive. That's one thing that prevents, or rather stops

the bond from having a broad market. Anything that added to that debt would hurt the salability of the bonds, and it would decrease the cushion there to take care of any contingencies in case of poor tax collections.

Q. How much, in percentage, of a total bond issue do you think is necessary to constitute a reasonable cushion of safety?

A. Well, that is a pretty hard question to answer. Generally speaking, we figure that there should be a very minimum of 10% margin, and depending upon the type of bond, we sometimes increase that.

Q. If it appeared that the City of Coral Gables was faced with the necessity of a Million to a Million and a Half capital investments for street, sewer, bridge, and other necessary construction in the immediate future, would that have any effect upon this reasonable margin of safety that you say exists in the 1937 plan?

A. Yes, I think it would, because it isn't the debt service tax that counts; it is the total over-all tax, and the property will only stand so much in the way of taxes, and if you have very large capital expenditures you would be running pretty close to the cushion on the total tax you could levy. You would have to put more for operating, and lower your margin on the other. You would probably be faced with quite a little lower collectibility because of any increase in taxes.

Q. Now, Mr. Morrison, what if any effect on the credit of the City of Coral Gables has the filing of this bankruptcy proceeding had?

A. Well, it had, right at the time it was filed, it had a bad effect judging from letters I received from several of my cutomers, clients who had bonds, and who wanted to know what it was all about, and thought that the whole thing was settled, and then suddenly find out there is litigation, and they didn't know whether they wanted to hold their bonds or not.

Q. Well, in your opinion does the investing public pay any attention to or discount these proceedings in bankruptcy?

A. Well, my opinion is they pay quite a little attention to them. They want to find out what it is all about, and usually they go to someone whom they think knows, to find out what it is all about, and why these proceedings are instituted.

Q. What if any effect will the successful completion of this proceeding in bankruptcy have upon the credit of the City and the market value of the refunding bonds?

A. Well, I think it would have a good effect on the credit of the City. It has been our experience that people who are buying bonds in blocks of say twenty-five or more, check pretty carefully, and if they are satisfied that all litigation is out of the way they are rather more apt to buy than if litigation is pending. So far as the market is concerned, under normal conditions the market would probably be a little stronger. Whether it would be so under present conditions or not, I don't know, on account of this war.

Q. Now, Mr. Morrison, are you familiar with the Bradford and Wainwright plans that were filed in this case as Defendants' Exhibits 43 and 45?

A. I have seen those plans, yes.

Q. Under the present status of the City of Coral Gables' credit, do you think that a new issue of bonds under either the Defendants' Exhibit 43 schedule, or the Exhibit 45, could be sold on the open market at par?

A. No, I don't.

Q. Please explain why you think they could not be?

A. Well, there juest isn't a market for Coral Gables bonds at par, nor has there been even at a 4% interest rate. Small amounts of bonds of 4s might be sold at par, but in my opinion the market just would not take Coral Gables bonds; we know it wouldn't take the stepped-up interest

rates at par, and I am reasonably sure it would not take the 4s at par.

Q. Well, is that because of our present status of being at war with Germany and Japan and Italy, or would that apply under conditions as of last June, 1940?

A. Of course, right now war conditions have a lot to do with it, but in my opinion there never has been a time, even, when the market would have taken these bonds at par. Now, let me qualify that; when I say the market at par, where anybody would pay par for them to the City.

Q. Now, what about the market conditions in the spring of 1940? Do you think the bond issues set forth in those two exhibits could have been sold at par?

A. No, I don't.

Q. What is your opinion about the ability of Coral Gables to maintain the added debt service burdens which those two exhibits would impose upon the City over and above the presently outstanding refunding bonds?

A. Well, the present refunding plan was predicated on certain factors with, as I said before, a reasonable cushion. Now, undoubtedly, in my opinion, the City of Coral Gables could pay the interest on these additional bonds, but it would be at the sacrifice of that cushion, and if war continues, I am not so sure that it could pay. In other words, there has to be, as I said before, a certain reasonable cushion in there to take care of the depressed conditions, and that cushion would be largely wiped out if these additional bonds were issued.

Q. Now, what effect if any upon the market value of presently outstanding refunding bonds would the issuance of additional bonds have?

A. It would have a tendency to lower the price because whenever you add more debt to a municipality, when the debt ratio becomes larger, your bonds are apt to slip off in price; that would be true in the case of any city.

Q. If Coral Gables should voluntarily agree to such an additional bond issue as set forth in those two exhibits, would it affect favorably or unfavorably the credit of the City?

A. It would affect it very unfavorably, because a lot of people, who came into this plan in good faith, believing that the refunding was all the city could stand, they would be very much put out of someone else got a better deal. If it becomes necessary later on to float a bond issue, it will give you trouble.

Q. Now, would a conclusion of the refinancing of the whole bonded indebtedness by the issuance of other bonds of the City under those Defendants' Exhibits 43 or 43 affect materially the ability of the City in the future to finance by bond issues capital investments in the City?

Mr. Walton:

Just a moment. If Your Honor please, we object to that question on the ground that the debt of a city cannot be composed for the purpose of creating additional borrowing capacity; that the question whether the composition of debts of a public body will create additional borrowing capacity is wholly immaterial, irrelevant and incompetent on the issue whether the plan of composition offered is fair, equitable and for the best interest of creditors.

The Master:

Objection overruled.

A. Why, as I understand it, what you want to know is whether the issuance of these additional bonds under this plan would hinder the City's ability to issue bonds in the future; whether it would hurt the credit of the city; is that it?

Q. Yes.

A. I think it would, to this extent, that there would be discrimination between the original bondholders, and that always creates some feeling. Certain people that might otherwise be a potential market wouldn't be, and how much effect it would have I don't know, but it undoubtedly would have some. Of course, as I understand it, you are referring more particularly to the issuance of these bonds, and you asked me a while ago, the additional debt does have, of course, a decided effect; I mean, increasing the debt.

Q. Has a decided effect?

A. Has a decided effect.

Q. But I am speaking here of getting at the credit of the City.

A. Yes.

Q. I believe you have already testified that the credit of the City had improved since the partial refunding?

A. Yes.

Q. Now, Mr. Morrison, do you know whether or not this January 1, 1937, plan of refunding was the result of various plans that were worked over and negotiated and studied by the City and its creditors, and over a period of a number of years, or not?

A. Yes, it quite obviously was, because—

Mr. Berry:

We object to that, if the Court please. If he has that of his own personal knowledge, it is admissible; if he has been told that, or it is obvious, I don't think he can testify to it; it would be mere hearsay.

The Master:

The witness may testify to what he knows, or, if his opinion is based on influence, state what the inference is based on.

A. Well, I know that even back in 1930, and from then on, various refunding schemes were discussed. This original bondholders' committee, and even before that, there was some discussion as to the proper type of refunding, and then when the committee organized they proposed at least six or seven different plans. There were at least two rather careful surveys made by realtors or experts in real estate as to the ability of the City to pay. There were innumerable plans discussed and talked about, I know, to my personal knowledge.

Q. Were those studies made by the creditors as well as by the City, independent studies by each?

A. Yes, both made them.

Q. Now, Mr. Morrison, in September, 1937, there had been exchanged more than 90% of the old obligations of the City for refunding securities of the January 1, 1937 issue. Was there in the fall of 1937 any market for old Coral Gables bonds, those that had not been exchanged?

A. Yes, there was a market.

Q. What type of market was that?

A. Well,—

Mr. Walton:

I object to that as not being anything in rebuttal of anything brought out on the case of the objecting creditors.

Mr. Adams:

It is in rebuttal of the testimony of the objecting creditors' witness Bradford, I believe it was, who filed the Exhibits 47 and 48, contrasting the prices paid by the City for old bonds and securities with the market prices of the refunding bonds, to show why the City was required to pay and had to pay those prices for the old bonds.

Mr. Walton:

If the Court please, the City has stipulated with us, and that was on Monday of this week, that those were the true market prices at the time mentioned on the exhibits, and so far as I know or can recall from reading this record, there has been not one single word introduced by the objecting creditors as to what the type of the market was.

The Master:

I think the question is justified; objection overruled.

A. Well, that was what we know as more or less a special market. Ordinarily what we would figure in a case of this sort is to take the market price of the refunding bonds and the market price of the certificates—the tax participation certificates, and base our price on the old bonds accordingly, but that price was not high enough in the majority of cases to buy old bonds; they were considerably above any price of that sort.

Q. Did it vary as to the old bonds that were not matured and those that were matured.

A. It was much higher—not much; it was considerably higher on the matured bonds, and that price kept getting stronger.

Q. Do you know any municipal securities bond buyer who was active in that market at that time, in the fall of 1937?

A. Yes, I think I do.

Q. What was his name and address?

A. I think the man who was most active was Ed. C. Wright, of St. Petersburg.

Q. State how active he was in that market, from your own knowledge.

A. We were generally able to get a better price and a better indication on the old bonds from him, and likewise we found that he was really making the market on

these old Coral Gables bonds. You had to beat his price if you wanted to get them.

Q. Did he or not have a standing order with you to buy those old bonds?

A. No, he didn't have a standing order.

Q. Now, what effect on the market of those old bonds of the Gables did this activity of Mr. Wright have?

Mr. Walton:

Now, if Your Honor please, I want to object to this line of questioning further, that the exhibits which Mr. Adams stated this testimony rebuts do not deal with the market values of the old bonds, but deal with the market values of the refunding securities.

Mr. Gibson:

And neither do they deal with the activities of any brokerage house in the market. This is absolutely not, and shouldn't be put in in rebuttal.

The Master:

The objections are overruled.

Q. During the fall of 1937 do you know of your own knowledge whether or not Mr. Wright sold any old bonds of Coral Gables?

Mr. Walton:

I object to that on the ground it is immaterial, irrelevant, incompetent and not within the issues.

Mr. Adams:

All right; I'll withdraw the question.

Q. Mr. Morrison, are you familiar with the expense of promoting and accomplishing refundings of municipal securities that have been paid in instances in Florida?

A. Yes.

Q. What percentage of the face of the obligations being refunded is reasonable expense?

A. The generally accepted figure in the majority of cases is 2%. It may vary up or down, depending on what it is and how much work is required.

Q. Is there any difference in the reasonable expense where there is a reduction of the principal amount of the indebtedness from that where there is no reduction in the principal amount of indebtedness?

A. You mean in a case where the principal is cut, whether the fees would be the same or not?

Q. Whether the fee and expenses could reasonably be the same?

A. I think they would be the same. It is a question, of course, on the individual set-up; and ordinarily you have got more work where you have to persuade the holder to take half of his holdings in bonds than you have if you refund par-for-par.

Q. Then you think the type of refunding where you cut your principal is a more difficult job of refunding?

A. I do, yes.

Mr. Adams:

That's all. You may cross examine.

(At this juncture of the proceedings, upon agreement of all those in attendance at the hearing, the further examination of the witness was deferred until 9:30 A. M., the following morning, December 19, 1941, and the witness was temporarily excused).

1566 G. N. SHAW was recalled as a witness on behalf of the Petitioner, and being still under oath, testified as follows:

Direct Examination.

By Mr. Adams:

Q. Mr. Shaw, there is in the record the total expenses that the City has been put to in connection with the voluntary portion of this refunding plan. What expenses has the City had in connection with this composition in preparing this case?

A. The expense to date, Mr. Adams, is $10,634.15, which includes all expenses in any way connected with this case, including clerical expenses, travel expenses, printing, postage, witness fees, reporting costs, and in fact all expenses of every nature except perhaps the assistance that has been occasionally given by the regular finance department employees and not charged directly to this account.

Mr. Adams:

That's all.

Mr. Walton:

If Your Honor please, I didn't want to object to that question, but I would like to know the purpose of this testimony.

Mr. Adams:

The purpose of the testimony is to complete the showing of the expenses incurred in the composition. Those in the voluntary portion of it have already been proven, and this brings it up to date. It is required under the Act that the expenses be shown.

Mr. Walton:
In other words, you are treating this as a part of the disclosure required by the Act?

Mr. Adams:
Yes; rather than proof.

Mr. Walton:
This is intended to disclose everything that has been paid by way of expense?

Mr. Adams:
Yes; that's all.

The Master:
Any questions?

Mr. Clarke:
I would like to ask Mr. Shaw this. Mr. Shaw, if the matter should become material at a later date, you have a break-down on that, have you?

Mr. Shaw:
I have no break-down at the present time, Mr. Clarke, but I will be glad to furnish one at any time that it may be asked for.

Mr. Clarke:
Well, I'm not asking you to furnish it now, but if it should become material at a later date, you can furnish it?

Mr. Shaw:
Yes.

Mr. Clarke:
That's all.

(Witness excused.)

(Thereupon, at 12:15 P. M. the hearing was recessed to the following morning, December 19, 1941, at 9:30 A. M.)

(The hearing in the above cause was reconvened at 10:00 A. M., on the 19th day of December, A. D. 1941; the appearances of counsel was the same as heretofore noted, excepting for the absence of Mr. Gibson.)

1559 A. B. MORRISON was recalled as a witness on behalf of the Petitioner, and being still under oath, testified as follows:

Cross Examination.

By Mr. Berry:

Q. Mr. Morrison, is your business a partnership, corporation or individual enterprise?

A. Individual, now.

Q. How many employees do you have, Mr. Morrison

A. I have five.

Q. And what are their general duties? I'm trying to find out what your business is.

A. I have one man over there who is, well, I would say my assistant or associate. I have two girls in the office, one mainly bookkeeping and the other secretary, although they both do secretarial work, and I have two people in Orlando, a manager and a secretary there.

Q. Now, do you buy any issues and resell them to the public, Mr. Morrison?

A. Oh, yes.

Q. Municipal issues?

A. You mean underwriting?

Q. Underwriting, yes.

A. Yes. May I qualify that so there won't be any misunderstanding, by saying that in most of these issues

we are underwriting we are probably associated with someone else. I mean, I seldom buy them by myself.

Q. Now, I thought yesterday that you said you did very little business with dealers.

A. I do less business with dealers than the average house. By that I mean that fewer bonds come to me from dealers than are sold. Every bond house does a good deal of business.

Q. I think you stated: "We, I believe, depend or handle, or our customers depend on us for supplying them with information before making purchases, and we buy very little stuff, relatively speaking, from dealers". That's correct, is it?

A. Yes and no, Mr. Berry. I am not trying to dodge that question. The average house gets its supply of bonds, that is, what we know as the secondary market bonds already issued from various brokers and dealers. We get the majority of the bonds that we handle in the secondary market from customers who are old friends of ours. Now, I might qualify that in one way further. For example, we try to go in through a dealer in a city, for instance, in Detroit, rather than go to the customer direct, with a lot of that stuff.

Q. Are the majority of bonds that you handle those that are listed with you for sale or purchases in a similar way by customers, or are they your own securities?

A. Well, do you mean by that that we have bought them and stocked them?

Q. Yes.

A. I could answer that in the affirmative by saying that we handle—that we act, probably 999 times out of 1,000, as principal buying the bonds and reselling them. We do have a good many bonds that come to us firm, as we know it; offered to us for sale, which we have exclusively, but even in that case we buy those bonds ourselves from the customers. I was trying to distinguish there between a broker's function and a dealer.

Q. Now, the issues of municipalities that you handle are usually in a syndicate; is that correct?

A. Right.

Q. And the data that is worked up on that issue will be worked up and passed around to a number of dealers, who agree on it?

A. Right.

Q. Now, in connection with the data that you principally on Coral Gables which you mentioned yesterday, have you any independent surveys of Coral Gables, or is that primarily the information which has been put out by the City in the way of audits, and surveys, and so forth?

A. We have, of course, all the stuff that has been put out by the City and the various committees, supplemented by data which we ourselves have dug up.

Q. Now, what does that data principally consist of that you yourself dug up, Mr. Morrison?

A. Well, it is, for example, a question of assessments; we may take an individual or a number of individual pieces of property in order to verify a statement made by somebody else as to values; that is, the ratio, for example, of real value to actual, or something of that sort, or the question of how much that particular piece of property may be taxed.

Q. You didn't make any general survey of Coral Gables independently of other people or the City, did you?

A. How do you mean by that, Mr. Berry? Do you mean put our own men out there, or something of that sort?

Q. Yes.

A. No, we did not.

Q. Now, when the Barker committee was formed for the deposit of these bonds, what connection if any did you have with the committee?

A. Absolutely no connection.

Q. Were you connected with the City of Coral Gables in any sort of an administrative capacity at that time?

A. Not at that time.

Q. Have you been at any time an official of the City of Coral Gables?

A. No. Mr. Berry, let me state there—I didn't say yesterday—at the time I was down here for the Guardian-Detroit Company I was fiscal agent, so-called, of the City of Coral Gables, which was an arrangement between the City and the Guardian-Detroit Company on this question of financing, and the Guardian-Detroit Company approved the budgets of the City, and in fact, the City couldn't appropriate money of over Three or Four Thousand Dollars without the Okeh of the Guardian Company. Now, that's the only official connection I had with the City, but that was really as an agent of the Guardian-Detroit Company.

Q. How long did that last, Mr. Morrison?

A. Two years.

Q. And that ended in '32 and the fore part of '33?

A. No, my recollection is that that—I can't tell you, but it was either '31 or—somewheres between '30 and '32; I think '31; I'm not positive.

Q. That's close enough. Then you were not representing either the City or the bondholders in the adjustment of their affairs after 1931 or '32?

A. No; only in so far as we might have represented individual blocks in discussions, but not officially any more than you or anybody else with a block of bonds could go in and listen and take a part and put your arguments in there.

Q. In other words, you represented individual bondholders more or less, and not any group of bondholders other than your own customers.

A. No.

Q. You did not represent the City in that negotiation?

A. No.

Q. But you were familiar with what was going on?

A. Yes, sir.

Q. Now, when the Barker committee was formed, and put out their plan, did you have yor customers deposit their bonds with that committee?

A. No.

Q. You kept them out of that deposit at all times?

A. Yes.

Q. Did you have your customers make the exchange in 1937 in New York?

A. We recommended to them to do that, yes.

Q. Now, did you disclose to your customers that the bondholders who had deposited had received by way of interest during the period of the deposit nearly Half a Million Dollars that was not paid to other bondholders?

A. Was that a matter of—we forwarded them all the information that we had, and recommended an exchange of bonds.

Q. Well, did you know, as a matter of fact, Mr. Morrison, that during the existence of that committee—and it has been so testified in this record—approximately Half a Million Dollars was sent to that committee from tax collections and distributed to the bondholders who deposited in that committee, as interest?

A. No, I did not know there was any such amount as that; I know there was an enormous amount of money sent to the committee; I didn't know even as large a portion of that had gone down to the certificate holders.

Q. So that information was not given to you?

A. No.

Q. And you did not, of course pass it on to your customers, not knowing it.

A. No.

Q. Did you know that in the final exchanges that the interest or the amounts that you said you knew went to the Barker Committee, were not adjusted in any way with the bondholders who did not deposit?

A. You mean that the money—will you repeat that question?

Q. Read him the question.

(Question read to the witness).

A. No, I did not. As I gather from that, you mean that there was a differential in favor of the people who had deposited with the Barker committee?

Q. To the extent of a Half Million Dollars.

A. No.

Q. Now, did your customers make their exchanges primarily in the year 1937, or later, or do you know?

A. I can't tell you that.

Mr. Berry:

For the record, I am not saying that Mr. Morrison, or assuming that Mr. Morrison made these exchanges, but as he stated, he merely recommended it to his customers.

(The Witness):

A. That's right.

Mr. Berry:

I am not trying to put anything like that in there at all.

Q. Mr. Morrison, did you know of Mr. Carl Exselsen's connection with the City of Coral Gables in connection with this refunding plan?

A. Before, you mean, or at the time? I knew he was employed by the City, later on, yes; that was a matter of public record.

Q. And you knew of that?

A. I knew he was employed by the City of Coral Gables.

Q. Do you know what services he was performing for the City?

A. Only very generally that he was supposed to try to get the bondholders and the City together.

Q. Did you know of the sale to the Coral Gables Development Company, of the sale of the delinquent taxes for which approximately $400,000.00 was paid?

A. That's under this Exselsen plan, you mean?

Q. Yes.

A. Only in a general way, Mr. Berry.

Q. Do you know the disposition of those funds that were collected by the City in that way?

A. No, I can't of my personal knowledge state that.

Q. Well, state specifically whether or not you know that that fund was substantially turned over to Mr. Exselsen for the furtherance of this plan?

A. No, I did not know that.

Q. Now, Mr. Morrison, on yesterday twice you stated that if one group of customers or one group of bondholders received more than another group, that would be unfair in your opinion, and you wouldn't recommend any such plan. I am correct in that?

A. That's what I stated, yes.

Q. Well, did you or not know that right at the time these exchanges were being made that Mr. Exselsen was out buying bonds on behalf of the City at prices in excess of the exchange value that would be received?

A. Yes, we knew; we ran across one or two instances of that sort on small amounts.

Q. Well, now, did you know that the Helen O'Connell claim, for instance, which amounted to $39,375.00, and would have received 50 refunding bonds and 9 tax participation certificates, which would have had a par value at that time as has been shown in this record of $9,693.75, or 24.61% of par, actually received $21,750.00, which is 55.23% of par, in money?

A. Did I know that?

Q. Did you know that?

A. No. Mr. Berry, let me make my position known in one respect here. All that we pass on in a deal of that

sort with our customers is, here is a refunding plan which proposes to refund the existing debt of Coral Gables as to certain bonds, bearing interest rates as given, and tax participation certificates. The question is, that we pass on, is the plan fair, can the City live up to it, and is it all that the City can reasonably be expected to pay. I want to make that part clear, that this is something that we don't know or don't have any way of finding out at the time.

Q. Then your investigation did not extend to the point in investigating a voluntary plan to see whether preferences were being given?

A. No.

Q. Now, if preferences were given in the case of Helen O'Connell, who held $39,375.00, and the case of Henry A. Thies, of $53,200.00, the Rybert Mortgage & Securities Corporation of $131,000.00, the Fiduciary Council in one instance $8,000.00, and another $10,000.00, and Leo K. Steiner of $66,000.00, Craig-Allen & Company, $17,000.00, Walter B. Richards, $26,000.00, Ed. C. Wright, $53,000.00, W. Blair Cochran, $3,840.00, Vincent M. Doherty, $780.00 in one instance, $38,880 in another, and $2,070.00 in another, Joseph A. Scant, $49,700.00, Julius A. Reefo, $6,590.00, and Charles A. Kirkle, $10,346.64, would you still say that they were carrying out that plan fairly and in good faith?

Mr. Adams:

Just a moment. We object to that question if Your Honor please. It involves the inference and the actual statement that they were preferences, where the record does not justify that. They describe those transactions without the complete disclosure of what the record shows the situation was with reference to them, that as to a number of them, the majority of them, they were cases where the City was under the compulsion of the Court

in writs of mandamus, and other factors that are necessary, for the witness to give an intelligent answer, and the question in so far as it refers to the record in the case, does not give the complete status of the facts as shown by the record.

The Master:

The objection is overruled.

Q. Please answer the question.

A. It would depend entirely on whether or not it was necessary to stop suit on those bonds, whether it was cheaper to buy them in or not. After all, what we are concerned with so far as our customer is concerned, is the question of what they are going to get if they refund. Now, whether this would make any difference or not, this came after any recommendations that we made.

Q. Then if I understand your answer, Mr. Morrison, if a bondholder threatened a suit or had instituted a suit, it was entirely proper to pay him more money than the others received?

A. I believe as a matter of business, yes, if the expense were less.

Q. Now, I understood you on yesterday, you thought the bankruptcy was justified in this instance as one way of preventing a law suit. Am I not correct in that?

A. In preventing a law suit?

Q. You stated that no settlement ought to be made of the unrefunded bonds, and therefore the bankruptcy should be invoked, to prevent suits by the holders of these bonds. Am I correct in that?

A. Yes, sir.

Q. Well now, why should they have resorted to bankruptcy in 1941 and not back in 1937, when these other amounts were being paid on this higher basis?

Mr. Adams:
We object to that as calling for a conclusion on the part of the witness.

Mr. Berry:
They have asked him his opinion, if the Court please; I'm checking his opinion as to why he gives it.

The Master:
I think that objection is well taken. Sustained.

Q. Now, Mr. Morrison, as a matter of fact, didn't you sell bonds to the City at a higher price than was provided for in this plan?

A. I may have, and probably did. I'm not sure. I haven't checked my records.

Q. In October, 1938, didn't you sell $4,260.00 of bonds to the City at a higher price than is in this plan?

A. I can't tell you as to price, Mr. Berry.

Q. And on August 12th of the same year didn't you sell $7,100.00 of bonds at a higher price?

A. I can't tell without records. If you have it in the record there it probably is correct.

Q. I have an exhibit here of the City; (handing same to witness).

A. 7100; that's an odd amount.

Q. That included coupons, Mr. Morrison, which may explain that.

A. I see.

Q. Now, were those your own bonds or your customers' bonds that you put in at that higher price, Mr. Morrison?

A. They were our bonds when we sold them to the City. I might explain, Mr. Berry, I can't tell you where the bonds came from originally excepting that we did not own the bonds indefinitely, I mean, for years before that.

Q. You did or did not?

A. We did not.

Q. You bought them after this plan, then, in 1937?

A. Yes; they were sold in 1938? Is that the date?

Q. Yes.

A. Yes, if that's the case.

Q. So you made trades against the plan after it was in operation.

A. Surely. I might add that in some cases there we protected the City on that stuff where higher bids were in the market.

Q. Now, Mr. Morrison, going back to the general effect of suits, isn't it a fact that where the city or municipality composes its differences with bondholders and has the amount that they owe and have to pay, and the time of payment and the rate of interest, all cleaned up, so that a possible investor in that municipality may know what debt service is to be required, doesn't that usually aid the City when you have a clear picture of it?

A. Surely. You mean when you get rid of all litigation?

Q. Yes. And as long as that litigation is being carried on, that is usually detrimental to the situation, isn't it?

A. Yes, usually.

Q. Yesterday you were speaking of increased bonds. Now, isn't it just a matter of common knowledge that with an individual or private corporation or municipal corporation there is a limited borrowing capacity, dependent upon income and property owned, and if you exceed that you don't get further credit?

A. That's true. In other words, an issue—in other words, you can find a market for only those bonds which apparently can be paid from taxes, in the case of a municipality.

Q. Now, Mr. Morrison, you live in Coral Gables, do you not?

A. Yes.

Q. Are you a taxpayer there?

A. Yes, sir.

Q. Didn't you express yourself some time back that—and very freely, in opposition to any compromise of these debts?

A. Yes, sir.

Q. And at one time indicated you would seek a recall of commissioners who compromised any debt, did you not?

A. Yes, sir.

Q. And yet you did compromise two debts on a higher basis than the plan proposed here, according to this record.

A. I sold bonds to the City, yes, sir.

Q. Now, did you have any bond sales to others during this period of time.

A. You mean old bonds?

Q. Old bonds of Coral Gables, from 1937 to date. Have you made sales to others than the City, or for the benefit of the City?

A. Oh, yes.

Q. How many of those, approximately? Can you give me any idea?

A. I couldn't, Mr. Berry, without consulting our records. I don't know, off-hand.

Q. Well, after your recommendation to go into the plan, you didn't feel yourself bound by the plan; is that true?

Mr. Adams:

We object to that question as calling for a conclusion, and expressions of—

The Master:

The objection is overruled.

A. We had no bonds of our own then. We bought and sold bonds. We did not want to hold any bonds until the market took us up. In other words, our market was merchandise.

Q. And you sold for the best price you could get?

A. Not always, no. I sold bonds to the City cheaper than they were offered elsewhere.

Q. But you sold other bonds to the best advantage?

A. Surely.

Q. Now, in August, 1938, didn't you offer by teletype $8,000.00 of bonds to Ed. C. Wright & Company?

A. I can't tell you, sir; if Mr. Wright's teletype reports show that, we probably did.

Q. And didn't you write him a letter under that date in which you refer to that offer?

A. I don't know.

Q. Well, I'll show you the letter, Mr. Morrison, and ask you if you can identify it. (Handing letter to witness).

A. Oh, yes, I remember that one. Yes. That's one case where we sold bonds cheaper to the City.

Q. As a matter of fact, didn't you sell those bonds to Robertson-and-somebody-and Company—Robertson, Link & Company?

A. Frankly, Mr. Berry, I don't know; I don't think we did. Those bonds were put with us with the distinct understanding, as I said in that letter, that they would not be used for suit purposes.

Q. Now you know, as a matter of fact, that these bonds are now seeking to be refunded—these very bonds?

A. No, I do not.

Q. Well, do you know they are not?

A. I can't tell you, under those transactions; my impression was that those bonds were sold to the City, but I am not positive.

Q. Now, at this time, and in this letter, don't you make the statement that somebody had outbid Ed. Wright for bonds in this market?

A. If I made the statement there, yes. On the other hand, we didn't go back to Ed. Wright for a cheap bid; he has the habit of keeping the prices low.

Q. Now, I understood you on yesterday to say Ed. Wright made this market in these bonds, and you would have to outbid him to get it.

A. That's correct.

Q. Now you state this morning he was keeping them low. Which is true?

A. Mr. Berry, in the bond business a man may make a market, may buy bonds at a certain figure, and the next bonds that come on the market he may top his bid, thinking he is going to get them. If he is driven—if somebody else—if, for instance, he finds he can't get them he will very often raise his price, but he is always trying to buy bonds as cheaply as possible.

Q. Well, I'm talking about who made the high bids at that time. Was it Wright, or somebody else?

A. In my opinion it was Ed. Wright.

Q. And yet in this particular instance you say this, do you not? "It would have been necessary probably to sell them away from you as we had a bid considerably higher from another outfit"?

A. Correct, Mr. Berry, but what I am getting at is that Ed. Wright had not given his best bid. I haven't the correspondence before me, or the teletype message, or the record of the telephone conversation, but I think when Ed. Wright came in he offered considerably more money, and expressed regret that he hadn't bought those bonds.

Q. Mr. Morrison, you did not investigate this voluntary plan to see whether any one group of bondholders were getting more than another, did you? You passed on the plan, and not the way it was being carried out?

A. That's right. As a matter of fact, that's an exceedingly difficult matter to check at any time that such a plan is in process of working out. We had no way of knowing.

Q. Mr. Morrison, when you sold bonds to the City, or for the benefit of the City, did you yourself receive any commission or reimbursement of expenses or other amounts?

A. You mean, from the City?

Q. In connection with those transactions.

A. Did I make a profit on the bonds I sold?

Q. Did you make a commission; not necessarily a profit; or reimbursement of expenses.

A. Well, as I said, as far as I know now, every sale we made was as principal, and therefore it was not a commission but a profit proposition. Yes, we did.

Q. Now, these were sales that you made to the City for money, and not exchanges?

A. Correct.

Q. Were any exchanges of bonds handled through you under this plan?

A. I don't think so, Mr. Berry; not as I remember it.

Q. Well, did you at any time influence anyone to bring bonds in and either exchange them or sell them to the City, for which you received compensation?

A. I can't answer that question, off-hand. I'm quite sure, however, that we may have and did influence people to deposit under the plan.

Q. In certain of these sales that were made at the direction of Mr. Exselsen, didn't you receive a percent. for the services you performed?

A. Of Mr. Exselsen?

Q. For services of Mr. Exselsen, while he was acting for the City.

A. Not as far as I know. Off-hand, I don't think so. I don't ever remember such a transaction.

Q. Well, was your recommendation to the parties relying on you, to make exchanges or to make sales to the City, Mr. Morrison?

A. To make exchanges.

Q. Mr. Morrison, do you know Mr. Albert Roberts?

A. Yes, sir. You mean of St. Petersburg?

Q. Yes. I believe he is still in St. Petersburg.

A. Yes.

Q. He was formerly with Wright, and now with Kobie Brothers.

A. Yes.

Q. Now, if he made the statement in this record that he would buy an issue of 4% bonds of between Four and Five Hundred Thousand Dollars and deposit a check, would that be some evidence to you of the salability of the bonds?

A. He made a sale at par?

Q. Yes.

A. It undoubtedly would, but that don't mean that those bonds would bring par at an advertised sale or a bona fide sale.

Q. They would bring par to the City, though, would they not?

A. Yes, of course, if a man is willing to pay $400,000.00, that's true, but he is turning back something that's worth far less than $400,000.00.

Q. Now, Mr. Morrison, isn't it a fact that the refunding bonds that are outstanding, plus these claims that have gone into judgment, and plus the unrefunded bonds, exceed the $4,200,000.00 of refunding bonds authorized?

A. I can't tell you, off-hand. I would say you would have to get that record from the City.

Q. Well, if the claims are outstanding in the—

A. You mean if those bonds are refunded here?

Q. No, sir; I mean because some of the bonds are not refunded, which would bring it down to $4,200,000.00,

the debt of the City—if this bankruptcy is not sustained, the debt of the City will exceed $4,200,000.00?

A. I don't know.

Q. I thought you said you had the most accurate data in the State on Coral Gables.

A. Mr. Berry, do you know how many cities there are in Florida?

[Q.] A. Yes, I do. I thought you came over here to testify, and had refreshed yourself as—

A. I did not.

Q. So this is catch-as-catch-can?

A. Not necessarily. You have that information in front of you.

Q. Mr. Morrison, if the indebtedness of the City, outside of bankruptcy, was actually reduced from the total amount shown to be due at the time by refunding bonds, would that have a tendency to raise or lower the price of bonds?

A. You mean, in plain language, if the debt is reduced?

Q. Yes, sir; if the total over-all debt were reduced, whether it is refunding bonds, mandatory levies or old bonds, of the total of this—of that indebtedness was reduced, would or not that have a tendency to raise the price of the bonds or lower them?

A. It would, assuming that all the—in other words, the lower the debt ratio the higher the value of the bonds, theoretically. I am assuming, now, that any refunding would carry the same rate as the present outstanding bonds.

Q. That would have a tendency to raise the price of the bonds?

A. Anything that lowers the debt has a tendency to raise the price; that's a general action.

Mr. Berry:

That's all.

The Master:
Any questions on the other side? Mr. Walton?

Mr. Walton:
No, sir.

Mr. Adams:
We have no further questions to ask him.

(Witness excused).

Mr. Adams:
That is all the testimony for the Petitioner, Your Honor. The Petitioner rests.

Mr. Berry:
With the exception of the possibility of Mr. Exselsen, that's all we have, Your Honor.

Mr. Adams:
We don't intend to submit any testimony on the point of the objections to the claims that Your Honor ruled on the other day.

The Master:
Then the objections heretofore filed by the Petitioner to the claims of the American National Bank of Nashville, Albert Roberts, Jr. (including the claims of Wylie and Thompson) and J. Howard Gould, are overruled.

Mr. Berry:
On behalf of the objecting creditors, the Motion is again renewed that the bonds of those who have filed consents in this cause be produced at this hearing for examination by these creditors in order that it may be determined that the parties signing the various consents

were actually the owners of the securities described therein and were entitled to consent at the time of the execution and filing of such consents. As the record now stands, it is submitted that only signatures have been produced, and these creditors have no way of determining whether or not the requisite number of bondholders have consented to this proceeding under the Statute; and it is further submitted that the Statute itself requires the submission of the securities mentioned, and we therefore move at this time that the parties filing consents in this cause be required to produce and exhibit the bonds held by them, either before the Master or at such other place or places as may be convenient and may be designated for the purpose. This motion has heretofore been made, and proof was attempted by an examination of Mr. Shaw at a former hearing, which, on objection, was not allowed to be introduced in evidence, and therefore this motion is again made, asking a production of said bonds. This motion also includes a production of tax participation certificates issued to the consenting creditors.

Mr. Adams:

In opposition to this motion, if the Court please, Your Honor has already ruled, on Page 942 of the record, that you would presume that the rightful owner has filed a claim until the contrary is shown, so whenever the claims are on the claim form which you have just exhibited, which is the printed form which is in the record, I so hold; now, the objecting creditors have filed objections to a number of these claims. They have offered no testimony in support of those objections. These consents, we take the position, that these proofs of claim and consents are before Your Honor for consideration only as acceptances of the plan of composition because they all involve indebtedness which has been admitted to exist by the City in its schedules attached to its Petition, and therefore

the City is in this case bound to file its acceptances and consents to the plan as such, and not prove up the number of proofs of claim. Now, the same rule—the Act is not complete as to the detailed requirements of the acceptances. All it says is that they shall be in writing. The form of acceptance submitted to Your Honor is with all the dignity of a proof of claim, and we believe rightfully entitled to that presumption, and if there is a factual reason why that acceptance should not be counted, that that is made subject to the objection and exception of the opposing interests, and that the burden is upon them to prove the basis upon which they object to the acceptance.

Mr. Berry:

The objecting creditors say in reply, this, that of necessity they are not acquainted with the parties with whom the City effected exchanges approximately four years ago, and therefore the requirement that bonds be exhibited in some proper form to ascertain the correctness of these consents is not unreasonable, and that the refusal to complete, as we see it, the proof of claim or consent is unreasonable on the part of the City. Secondly, in support of the objections filed, a questionnaire was prepared and sent out to the various claimants with the view of producing the evidence which the City now says has not been produced when the burden is upon the objecting creditors to carry this burden. The sending out or answering of this questionnaire was refused by the Court on the ground that these consenting creditors were not adversely parties under the rule, and the objecting creditors were denied this right of procedure. With the view that the information at hand was in the hands of the City, it was then undertaken to examine Mr. Shaw regarding these consents which had been filed by the City, and on objection, the objecting creditors were pre-

cluded from pursuing that line of investigation, and we claim that it is the duty of the City to furnish satisfactory evidence that can be examined as to these proofs of claim, and failing to do that, they have failed to carry the satisfactory burden.

Mr. Adams:

If Your Honor please, I don't know whether you have seen the ruling of Judge Holland on the questionnaire that was sent out. That ruling did not attempt—even attempt or insinuate that the objecting creditors were cut off from any rights of investigating the question which they sought to investigate through the means of the questionnaire. As I recall the ruling, it pointed out the appropriate procedure they could follow to go into that question, and left them all their rights under the rules of the Federal Court to develop that question. That ruling was made last February, 1941, and they have taken no step since then to follow out the indicated appropriate procedure under the rules to develop the questions which they suggest. I don't recall that the attempt to examine Mr. Shaw was any limitation upon their rights. It certainly did not affect their rights under the rules of the Court as interpreted by Judge Holland to go into this question, and we still submit that the form in which the acceptances have been filed by the City constitute, as Your Honor ruled before, a prima facie showing, and that they would be considered as good acceptances unless they were proven not to be good. Furthermore, if Your Honor please, the objecting creditors have filed—Mr. Redfearn says recently—I think it was last January—recently in this case, probably—voluminous objections to the proofs of claim that they designate there, and they have apparently abandoned them by offering no testimony to support their objections.

The Master:

Anything further? If not, I think unquestionably the filing of the consents is equivalent to the filing of a claim, and puts these consents on a parity with proofs of claims generally; I believe that has been so held; and I can't escape the conclusion that the rule which puts the burden on the objector applies in this case as it does in the case of proofs of claims filed by the objecting creditors. Consequently, the Motion is denied, with leave to the objecting creditors to apply to the District Judge for a ruling on the point.

(Thereupon, the hearing was adjourned to December 22, 1941, for such other and further proceedings as might be presented in the cause.)

This Cause came on for further hearing before the Honorable F. B. Hudson, Special Master herein, commencing at 2:00 o'clock P. M. on the 22nd day of December, A. D. 1941.

There appeared at said hearing, pursuant to that certain order of the District Judge heretofore entered in this cause, Carl L. V. Exselsen.

There was present at said hearing, of counsel for certain of the parties hereto, the following: Mr. E. L. Semple, City Attorney of the City of Coral Gables, Florida; Messrs. Morton B. Adams, and Ira C. Haycock, of counsel for the City of Coral Gables, Florida, Petitioner herein. Mr. G. N. Shaw, City Clerk of the City of Coral Gables, Florida. Mr. W. Terry Gibson, Mr. Miller Walton, and Mr. S. O. Carson, on behalf of certain of the objecting creditors herein.

Whereupon, the following proceedings were had:

Mr. Gibson:

I wish to call Mr. Exselsen as a witness on behalf of Fiduciary Council, Inc. only, and with reference solely to some of the phases of the claim of Fiduciary Council which has generally been known as one of the Special Issues, and in connection with some of the collateral circumstances surrounding the agreement between the City of Coral Gables and Fiduciary Council, being Special Issue Exhibit No. 2, as set forth in the Stipulation in that regard heretofore introduced into evidence.

1598 CARL L. V. EXSELSEN was thereupon called as a witness on behalf of Fiduciary Council, Inc., one of the objecting creditors herein, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:

Q. Mr. Exselsen, the stipulation entered into by and between the City of Coral Gables and Fiduciary Council has heretofore been filed in evidence in this case. Unless you request it, I won't go into the record for it, but if you want it, feel free to call for it.

A. All right.

Q. The Answer of Fiduciary Council, Mr. Exselsen, sets forth that you negotiated the settlement of special settlements on behalf of the City of Coral Gables with Fiduciary Council, and that that settlement was approved by the City of Coral Gables, and sets forth that the agreement was in effect tentatively for quite some period of time before the date of the stipulation, and that one of the phases of the agreement was that it was a matter

of value to you to be able to go among the various creditors with the assertion that you had settled with Fiduciary Council, and resolved that litigation, and that in being so enabled to do it you were greatly assisted in getting the 90% consents. Would you tell the Court the circumstances surrounding that deal?

A. The negotiation in connection with that was held with you, Mr. Gibson, as attorney for Fiduciary Council. I never met any of the officers of Fiduciary Council at all, but all my negotiations were with you. The first step in the negotiations was an oral agreement which was made between you and myself, which oral agreement was substantially what was later specifically approved by the Commissioners of the City of Coral Gables. That oral agreement, however, was made subject to some very definite exceptions. First, it was not to take effect until I had the written consents of 90% of the creditors; that is, 90% in amount of the creditors. Second, it wasn't to be effective until it was approved by the City of Coral Gables City Commission; and third, it wasn't to be effective until the representatives of all of the signatory creditors to the regular contract, that is, that that wasn't a special contract, were advised that the deal with Fiduciary Council was a special deal and the terms of that special deal. Now, all of those things were complied with. I took the matter up with the Barker Committee and explained the whole situation to them and got their approval. I took the matter up with each representative of all groups of creditors, such as Mr. Tuller, for example. I then submitted the entire thing to the Commissioners of Coral Gables who unanimously approved the contract as we had worked it out, and it was later carried out in just exactly that form, after I had gotten the 90% of the other creditors.

Q. And was that oral agreement that you proceeded under of great assistance to you in getting the 90%?

A. Well, you agreed that, having entered into this oral agreement, that you would no longer harrass the City with any further litigation, and you gave me permission to state to other creditors with whom I had not then consummated agreements, that you had settled, and gave me the authority to refer to you for confirmation of that fact, so it was definitely of value to me in reaching the 90% arrangement. It was definitely of value to me in negotiating for the City.

Q. And was not also a portion of the consideration falling to you from me a written commitment that I would not in any manner take an adverse position to the—or take the position adverse to the City's position in this refunding?

A. Yes; you gave me such a letter, and that was also part of your agreement.

Q. Have I lived up to that agreement?

A. So far as I know, you complied with every provision of it, and you started no suits, and you did help me in at least half a dozen different situations where the question came up as to whether or not Fiduciary Council had or had not been settled with, and you confirmed that fact to those with whom I was dealing.

Q. Now, Mr. Exselsen, who evolved the plan of composition in the City of Coral Gables?

A. Well, when you speak about plan of composition, do you mean the plan that's shown in that December contract?

Q. The plan that's shown in the December contract and any subsequent modification up to the time of the filing in bankruptcy.

A. I evolved that plan in its entirety. I drafted the contract from beginning to end. I was the one that submitted it. It was a brand new proposition to all the different groups that were interested in this situation.

Q. Did a Dr. Reed, who has heretofore testified in this case as an expert witness and an authority on municipal affairs, make any studies, surveys or recommendation to you which you followed in evolving this plan of refunding?

A. Who?

Q. Dr. Reed.

A. I never heard of him. I never heard of him. I never had any conversation with him. Who is he?

Q. He is an expert that has been testifying for the City, and testified that he made a study and survey of the City's financial affairs, and as I understand it, that his study was the basis of this refunding plan.

A. He had absolutely no connection with any of the plan. I evolved it; no connection at any stage of the game; I never heard of the gentleman; never met the gentleman; never saw any of his data if he made any such data; and the name is absolutely new to me.

Q. I might ask you one further question. Was the plan of composition in this situation the final perfection of a plan on which the Committee or other parties had been working on over a period of six years or so, or was that solely and completely your work, separate and apart from any outside influences?

A. Well, there have been efforts for six or seven years prior to the time I was called in on this particular employment to make a settlement with the City of Coral Gables. The efforts had been all fruitless, so that I made up my mind when I started that I would not even—that I would completely disregard anything that had been previously done and start off on a brand new tack, and the whole program that was evolved in this plan is definitely a new plan, as can be very quickly verified by reference to the previous written plans that had been in existence,—tentative plans that had been in existence between the City and the Barker Committee.

Mr. Gibson:
That's all.

The Master:
Mr. Gibson, I am a little in doubt. Mr. Exselsen has testified that the agreement between you and him started off as an oral agreement. I haven't found that it was ever put in writing or not.

(The Witness):
A. Yes, sir, it was finally incorporated in this contract which was formally approved by the City, and which constitutes the special agreement between the City of Coral Gables and Fiduciary Council.

The Master:
That contract which has been filed was the fulfillment of your oral agreement?
A. I don't know what contract has been filed here, but there was a written contract, and if it was filed, I don't know, but it incorporated the oral contract.

Mr. Gibson:
That was in the Stipulation filed in the Court, is it not?
A. Yes, sir, that's correct.

Mr. Gibson:
And that's the one you refer to, is it not?
A. That's correct.

Mr. Adams:
The Special Issue Exhibit 2 in the testimony, the Stipulation filed in the Federal Court in the suit of Fiduciary Council, Inc. against the Petitioner, was the evidence of the consummation of this agreement.

Mr. Gibson:

I might ask one or two more questions.

Direct Examination (Resumed).

By Mr. Gibson:

Q. At the same time we made the agreement with regard to Fiduciary Council, we also made a like agreement with other clients of mine holding securities, did we not?

A. As I recall, there was Steiner Brothers had some, and there were two or three other clients that were involved there.

Q. And no written agreement was entered into in that regard because that involved a cash settlement; is that not the case?

A. Yes; it was consummated at the time; there was an escrow.

Q. Through the Chase National Bank, wasn't it?

A. No, I think it was the National City Bank, as I recall it.

Q. Of New York City?

A. Yes. Mr. Master, may I amplify my testimony with respect to the plan to this extent. I laid out the fundamental principles of the present plan in written form and then that was submitted to leaders of about eight or ten different groups of bonds. For instance, it went into the Barker Committee, it went to Tuller, and VanIngen and other men of that type. Then we arranged two series of conferences; first was a group with the so-called independent bondholders, that is, those who held bonds independent of the Barker Committee, and we went over all the phases of the plan, analyzing and answering questions, and suggestions were made, interest rates were discussed; and then the same thing was done with the so-called Committee that represented the committee group, and then we reconciled the results of the confer-

ences, which of course led to some modifications of the original plan, so that it was approved by both sides of the opposing bondholder groups, and that was what was evolved as the final. I would say that some of those ideas on interest rates, methods of payment, and so on, came from these different conferences that were held, but the fundamental principles of the plan, the fundamental lay-out was definitely submitted by me to them independent of any other source. Nobody—the City Commissioners knew nothing about it, and the whole plan was brand new to them when it came to them for the first time in printed form.

Q. And it was with these same parties that you took up the special agreement with me, and which met their approval?

A. That's right.

Mr. Gibson:

That's all.

Mr. Adams:

We have no questions to ask.

By Mr. Gibson:

Q. Mr. Exselsen, was my agreement not to take a position adverse to the interests of the City of Coral Gables simply on behalf of Fiduciary Council, or with regard to any clients whatever who might seek my services?

A. Any clients whom you then represented or who might seek your services in any kind of litigation.

Mr. Gibson:

That's all.

(Witness excused.)

Mr. Gibson:
Now I would like permission of the Master to submit either the original of that letter, if it can be located, or a copy, a verified copy of it.

The Master:
Do you want to offer that as an exhibit?

Mr. Gibson:
Well, in as much as we are going to close now, I would like to offer it.

Mr. Adams:
If the Master please, Mr. Exselsen has made a statement into the record of what was contained in the letter, and the other party to the correspondence is the examining counsel, and he has made his statement too. I don't see any necessity for holding open the record to produce the letter.

Mr. Gibson:
It's all right; I was going on the theory the letter might be the best evidence.

Mr. Adams:
We have no objection to the testimony about it.

The Master:
There was no objection so the testimony is admitted.

Mr. Gibson:
That will be all right then, with that understanding. I move permission to put in the record as evidence on behalf of Fiduciary Council, certified copy of the judgment forming the basis of Fiduciary Council's claim, together with a certified copy of the peremptory writ of mandamus based thereon, if they are not already in.

Mr. Adams:
That's agreeable to the Petitioner.

The Master:
The motion is granted. Is there anything else, Gentlemen?

Mr. Walton:
There is no further testimony on behalf of Ed. C. Wright.

Mr. Gibson:
We have nothing further.

Mr. Adams:
There is nothing further on behalf of the Petitioner.

(Whereupon, the hearing was concluded and adjourned, subject to final argument before the Master).

1609 On January 20, 1941, Petitioner's Evidentiary Exhibits 5, 10, 12, 14, 17, 19, 20 and 21 were filed before the Special Master in words and figures as follows, to-wit:

EXHIBIT No. 5.

Filed Jan. 20, 1941, F. M. Hudson, Master.

Certificate of the Status of Debts of the City of Coral Gables as of January 1, 1937.

I, G. N. Shaw, Clerk and Director of Finance of The City of Coral Gables, Florida, Do Hereby Certify that as of January 1, 1937, the debts of said City, as taken by me from the original records in my custody, were as follows:

Title of Issue	Date of Issue	Principal Amount	Unpaid Interest Accrued to 1/1/37
Permanent Improvement	Dec. 1, 1925	$ 526,000	$ 179,899.67
Permanent Improvement	Apr. 1, 1926	424,000	131,615.00
Improvement	July 1, 1926	1,237,000	417,690.00
Municipal Improvement	Jan. 1, 1927	4,318,000	1,481,080.00
Refunding	June 1, 1928	120,000	40,350.00
Refunding	June 15, 1928	835,000	281,807.50
Refunding	June 1, 1929	154,000	48,410.00
Revenue	July 1, 1929	185,000	66,000.00
Refunding	Jan. 1, 1930	87,000	30,840.00
Refunding	July 1, 1930	91,000	30,210.00
		$7,977,000	$2,707,902.17

Description of Indebtedness	Principal Amount		Unpaid Interest Accrued to 1/1/37	
	In Original Form	Reduced to Judgment	In Original Form	Reduced to Judgment
Notes Payable:				
Florida Power & Light Co.	$120,843.29		$52,590.30	
Rensellaer Valve Co.	2,636.00		321.34	
J. E. Canning	10,000.00		4,138.50	
County of Dade	5,653.20		2,880.38	
City of Miami	11,146.80		5,633.53	
Gamewell Company	10,758.00		3,222.03	
Accounts Payable:				
Florida Power & Light Co.	149,630.11		32,199.75	
Judgments:				
Ellen Hopkins		$13,337.62		$ 3,227.18
Sarah McGuire		71,965.50		25,580.91
W. W. Blount		15,063.45		4,333.60
Parker Maxwell		274.65		50.12
E. B. Connally		765.28		140.34
		.$412,073.90		$134,317.98
		$8,389,073.90		$2,842,220.15

making a total accrued debt of $11,231,294.05.

I Do Further Certify that subsequent surrender and cancellation of interest coupons, and adjustments made following a detailed physical inventory of interest coupons received and canceled by the City during the life of the Bonds, reduced the accrued interest upon said bonds as shown above, by the amount of $48,687.69, bringing the actual outstanding indebtedness of the City, as of January 1, 1937, to a revised total of:

Bonds	$7,977,000.00	
Other Debt	412,073.90	
Total Principal		$8,389,073.90
Interest accrued and unpaid on bonds	$2,659,214.48	
Interest accrued and unpaid on other debt	134,317.98	
Total Interest		$2,793,532.46
Total All Obligations		$11,182,606.36

In Witness Whereof I have hereunto set my hand and the seal of The City of Coral Gables, Florida, this 18th day of January, 1941.

G. N. SHAW,
City Clerk and Director of Finance.

1611 EXHIBIT No. 10.

Filed Jan. 20, 1941, F. M. Hudson, Master.

Certificate.

In the United States District Court in and for the Southern District of Florida, Miami Division.

In the Matter of:
The City of Coral Gables, Florida.
In Bankruptcy No. 1867-M.

State of Florida,
County of Dade.

Before me personally appeared Morton B. Adams, who after being first duly sworn, deposes and says: That he is the duly elected and qualified City Attorney for the Petitioner, The City of Coral Gables, Florida; that he was first elected to said office in June 1933 and has held the same continuously since said date; that during the years 1933 to date he personally represented the City in numerous suits against it in the Circuit Court of Dade County, and in the United States District Court, Southern District of Florida; that the attached schedule is a true, accurate and complete list of all suits instituted and prosecuted against the City of Coral Gables upon its defaulted bonds and coupons and correctly shows the approximate date the suit was instituted, the name of the plaintiff bondholders, amount involved and the manner of disposition or present status of each suit.

MORTON B. ADAMS.

Subscribed and sworn to before me this 12th day of December, A. D. 1940.

KATHERINE S. EDGAR,
(N. P. Seal) Notary Public, State of Florida at Large.

My Commission expires: July 26, 1943.

11-18-40.

STATEMENT showing litigation again The City of Coral Gables upon bonds and/or coupons showing the date the suit was instituted, the court, name of the creditor, and approximate amount of bonds and coupons sued upon, tne disposition of the suit.

Date	Court	Creditor	Amount	Disposition
1933	Circuit #15367	Laura A. Tucker	$ 4,327.50	Settled for less than face amount 5/16/36.
8/13/34	Circuit #15692	Rudolph Avenius	4,680.00	Settled for less than face amount.
1/12/35	U. S. Dist. Ct. #2144-M-Civ.	Edwin H. Barker, et al	$2,351,575.00	Bonds and coupons refunded and suit dismissed 4/25/38.
2/24/36	#16567 Circuit	Leo K. Steiner	8,280.00	Settled by payment of past due interest 4/-28/36.
3/25/36	U. S. Dist. Ct. #2296-M-Civ.	Frances L. Ragan	50,000.00	Adjusted for less than face amount 6/10/36.
4/20/36	Circuit #16674	Rybert Mortgage & Securities Corp.	4,950.00	Settled by payment of past due interest 5/-26/36.

Date	Court	Creditor	Amount	Dismissed 4/25/38. Disposition
11/12/36	U. S. Dist. Ct. #2385-M-Civ.	Leo K. Steiner	20,000.00	Adjusted and settled 10/19/37.
6/12/36	Circuit #16751	Rybert Mortgage & Securities Corp.	50,000.00	Adjusted and settled 10/19/37.
7/11/36	U. S. Dist. Ct. #2333-M-Civ.	C. J. Root	40,000.00	Writ issued for tax levy 8/16/37.
10/ 3/36	Circuit #16863	Rybert Mortgages & Securities Corp.	6,780.00	Adjusted and settled. Dismissed 12/23/37.
4/28/36	Circuit #16688	Rybert Mortgage & Securities Corp.	23,777.50	Adjusted and settled. Dismissed 12/23/38.
9/30/36	U. S. Dist. Ct. #2375-M-Civ.	W. J. Noel	25,000.00	Writ issued for tax levy 10/5/37.
12/24/36	U. S. Dist. Ct. #2397-M-Civ.	Henry A. Thies	100,000.00	Adjusted and settled 10/28/37.

2/24/38	U. S. Dist. Ct. #2512-M-Civ.	G. E. Vallette	12,000.00	Writ for tax levy issued 1/23/39.
7/17/37	U. S. Dist. Ct. #2418-M-Civil	Leo K. Steiner	11,872.14	Adjusted and settled 10/10/37.
4/17/37	U. S. Dist. Ct. #2127-M-Civ.	Helen E. O'Connell	50,000.00	Adjusted and settled 10/18/37.
5/ 7/37	U. S. Dist. Ct. #2442-M-Civ.	Fiduciary Counsel, Inc.	200,000.00	Writ for tax levy issued 8/7/37 and pending.
5/ 7/37	U. S. Dist. Ct. #2441-M-Civ.	Augustus T. Ashton	30,000.00	Writ for tax levy issued 8/7/37 and pending.
Aug. 1937	U. S. Dist. Ct. #2466-M-Civ.	Lois H. Harmon	10,000.00	Writ for tax levy issued 5/13/38 pending.
4/23/36	U. S. Dist. Ct. #2305-M-Civ.	Thomas Pesik	50,000.00	Adjusted and settled. Dismissed 4/25/38.

EXHIBIT No. 12.

Filed Jan. 20, 1941, F. M. Hudson, Master.

Certificate of the Status of Debts of the City of Coral Gables as of June 30, 1940.

I, G. N. Shaw, Clerk and Director of Finance of The City of Coral Gables, Florida, Do Hereby Certify that as of June 30, 1940, the debts of the City, as taken by me from the original records in my custody, were as follows:

Title of Issue	Date of Issue	Principal			Interest Past Due
		Immature	Past Due	Total	
Permanent Improvement	Dec. 1, 1925	$43,000.00	$1,000.00	$ 44,000.00	$17,334.17
Permanent Improvement	Apr. 1, 1926	7,000.00	7,000.00	14,000.00	7,397.50
Improvement	July 1, 1926	—o—	14,000.00	14,000.00	8,070.00
Municipal Improvement	Jan. 1, 1927	183,000.00	29,000.00	212,000.00	129,870.00
Refunding	June 1, 1928	—o—	3,000.00	3,000.00	1,605.00
Refunding	June 15, 1928	25,000.00	5,000.00	30,000.00	16,365.00
Refunding	June 1, 1929	—o—	5,000.00	5,000.00	2,275.00
Refunding	Jan. 1, 1930	—o—	1,000.00	1,000.00	890.00
Refunding	July 1, 1930	3,000.00	—o—	3,000.00	1,710.00
Total original issues, unrefunded		$261,000.00	$65,000.00	$326,000.00	$185,516.67

Judgments - -				
Augustus T. Ashton	$ 6,490.94	—o—	$ 6,490.94	—o—
Fiduciary Counsel, Inc.	90,204.46	—o—	90,204.46	—o—
Lois Harmon	3,479.26	—o—	3,479.26	—o—
W. J. Noel	9,141.02	—o—	9,141.02	—o—
C. J. Root	43,239.91	—o—	43,239.91	—o—
G. E. Vallette	5,602.07	—o—	5,602.07	—o—
E. B. Connally	—o—	765.28	765.28	300.98
Parker Maxwell	—o—	274.65	274.65	107.80
Total Judgments	$158,157.66	$1,039.93	$158,197.59	$408.78
Refunding Bonds of Issue of 1/1/37:				
First Series	$3,793,318.00	—o—	$3,793,318.00	—o—
Second Series	20,500.00	—o—	20,500.00	—o—
Total Refunding Bonds	$3,813,818.00		$3,813,818.00	
Total All Classes	$4,232,975.66	$66,039.93	$4,299,015.59	$185,925.45

I Do Further Certify that there was also outstanding, as of the above date, a total, after the payment and deduction of all dividends then due, of $6,521,431.40 of Tax Participation Certificates of the issue of January 1, 1937.

In Witness Whereof, I have hereunto set my hand and the official seal of The City of Coral Gables, Florida, this 18th day of January, 1941.

G. N. SHAW,
City Clerk and Director of Finance.

(Seal)

EXHIBIT No. 14

Filed Jan. 20, 1941, F. M. Hudson, Master.

The City of Coral Gables.

Statement of Tax Levies and Current Collections Each Year, 1925-26 to 1939-40, Inclusive, and of Levy for 1940-41.

	Assessments			Millage			Tax Levy				
	Estimated Full Value	Basis of Assessment	Total Assessment Roll	Debt Service N	Other N	Total	Debt Service N	Other N	Total	Tax Collections Within Fiscal Year	Percent Collections
1925-26	$ 98,368,800	50%	$49,184,400	o	o	10	o	o	$ 491,844.00	$255,928.25	52.03%
1926-27	181,620,700	50%	90,810,350	t	t	13.5	t	t	1,225,939.73	800,227.46	65.27%
1927-28	169,473,720	50%	84,736,860			13.5			1,143,947.61	390,275.96	34.12%
1928-29	134,205,926	50%	67,102,963	D	D	23.5	D	D	1,587,919.51	538,604.14	33.92%
1929-30	111,108,478	50%	55,554,239	i	i	20	i	i	1,113,636.34	447,103.80	40.15%
1930-31	64,752,600	50%	32,376,300	v	v	30	v	v	976,676.25	313,384.89	32.09%
1931-32	65,102,760	50%	32,551,380	i	i	30	i	i	976,722.75	307,574.27	31.49%
1932-33	64,317,674	50%	32,158,837	d	d	30	d	d	964,765.11	261,664.55	27.12%
1933-34	33,209,696	50%	16,604,848	e	e	30	e	e	498,145.44	222,357.47	44.64%
1934-35	32,367,768	50%	16,683,884	d	d	30	d	d	498,702.58	253,898.90	50.91%
1935-36	22,750,051	100% Bldgs. 170% Land	27,610,883	5	12	17	$138,054.41	$294,328.60	432,383.01	236,831.46	54.77%
1936-37	22,719,168	100%	22,719,168	5	14	19	113,595.08	268,658.26	382,253.34	252,385.44	66.03%
1937-38	23,684,018	100%	23,684,018	6.99	15.01	22	165,004.32	283,942.55	448,946.87	351,478.53	78.29%
1938-39	25,155,307	100%	25,155,307	7.83	14.17	22	196,965.34	277,965.74	474,931.08	382,957.81	80.63%
1939-40	24,069,877	100%	24,069,877	8.01	13.09	22	198,275.08	248,137.97	446,413.05	356,823.38	79.93%
1940-41	25,052,331	100%	25,052,331	8	14	22	200,588.47	256,405.69	456,994.16	Incomplete	

I, G. N. Shaw, Clerk and Director of Finance of The City of Coral Gables, Florida, Do Hereby Certify that the above figures were drawn by me from the original records and audit reports of The City of Coral Gables in my custody, and accurately state the facts as represented therein.

Witness my hand and the official seal of The City of Coral Gables, Florida, this 18th day of January, 1941.

(Seal)

G. N. SHAW,
City Clerk and Director of Finance.

EXHIBIT No. 17.

Filed Jan. 20, 1941, F. M. Hudson, Master.

The City of Coral Gables.

Statement of Default Situation at Close of Each Fiscal Year, From Annual Certified Audit Report.

As Of:	Amount of Default			
	Bond Principal	Other Debt Principal	Interest	Total
June 30, 1931	$ 335,000.00	$ 80,475.25	$ 512,887.50	$ 928,362.75
June 30, 1932	606,000.00	135,446.12	916,272.57	1,657,718.69
June 30, 1933	914,000.00	246,340.41	1,353,185.56	2,513,525.97
June 30, 1934	1,256,000.00	246,340.41	1,763,932.52	3,266,272.93
June 30, 1935	1,608,000.00	262,340.41	2,248,096.65	4,118,437.06
June 30, 1936	2,025,000.00	262,340.41	2,615,178.04	4,902,518.45
June 30, 1937	2,398,000.00	329,402.55	3,018,877.23	5,746,279.78
June 30, 1938	60,000.00	33,914.53	223,234.34	317,148.87
June 30, 1939	48,000.00	1,039.93	169,144.17	218,184.10
June 30, 1940	65,000.00	1,039.93	185,516.67	251,556.60

I, G. N. Shaw, Clerk and Director of Finance of The City of Coral Gables, Do Hereby Certify that the above and foregoing is a true and complete statement of the amounts of bonds, other debt, and accrued interest thereon, unpaid and in default as of the dates set opposite the respective amounts, as taken by me from the certified audit reports of the accounts of The City of Coral Gables.

In Witness Whereof, I have hereunto set my hand and the official seal of The City of Coral Gables, this 18th day of January, 1941.

G. N. SHAW,
City Clerk and Director of Finance.

(Seal)

EXHIBIT No. 19.

Filed Jan. 20, 1941, F. M. Hudson, Master.

The City of Coral Gables.

Statement of Progress of City of Coral Gables Refunding to June 30, 1940, and Changes From That Date to January 18, 1941, in Terms of Debt as of January 1, 1937, or Refunding Value of Debt Under Ordinances No. 269 and No. 289.

	Bonds	Bond Interest	Other Debt	Other Debt Interest	Total
Amount outstanding January 1, 1937 (effective date of refunding program)	$7,977,000.00	$2,659,214.48	$412,073.90	$134,317.98	$11,182,606.36
Amount since exchanged for refunding securities	$7,505,000.00	$2,480,607.07	$411,033.97	$134,127.52	$10,530,768.56
Percentage exchanged	.....	.....	.....	.....	94.18%
Amount unrefunded and since reduced to judgment and under mandatory spread levies.	$ 146,000.00	$ 60,295.73	.....	.....	$ 206,295.73
Percentage in judgment	.....	.....	.....	.....	1.84%
Amount unrefunded in original form	$ 326,000.00	$ 118,311.68	$ 1,039.93	$ 190.46	445,542.07
Percentage unrefunded	.....	.....	.....	.....	3.98%
Percentage unrefunded, both classes	.....	.....	.....	.....	5.82%
Refunded since June 30, 1940..	$ 5,000.00	$ 1,830.00	.....	.....	$ 6,830.00
Percentage unrefunded, January 18, 1941	.....	.....	.....	.....	5.76%

I, G. N. Shaw, Clerk and Director of Finance of The City of Coral Gables, Florida, Do Hereby Certify that the above figures were drawn and calculations were made by me from the original records of The City of Coral Gables in my custody, and are true and correct statements of the situation described.

Witness my hand and the official seal of The City of Coral Gables, Florida, this 18th day of January, 1941.

G. N. SHAW,
City Clerk and Director of Finance.

(Seal)

EXHIBIT No. 20.

Filed Jan. 20, 1941, F. M. Hudson, Master.

The City of Coral Gables.

Certificate of Balance of Judgments and Mandatory Levy Writs as of June 30, 1940; and Statement of Calculated Amounts of Required Levies to Retire Those Judgments.

Total Judgments and Mandatory Levies unpaid as of June 30, 1940 ..... $158,157.66

Amounts necessary to retire above judgments in accordance with required schedule, including interest on unpaid balances:

1940-41	$27,630.78
1941-42	26,755.09
1942-43	25,919.40
1943-44	19,673.29
1944-45	17,692.63
1945-46	16,483.42
1946-47	16,001.01
1947-48	15,518.60
1948-49	15,036.19
1949-50	4,469.17

I, G. N. Shaw, City Clerk and Director of Finance of The City of Coral Gables, Florida, Do Hereby Certify that the above balances, as of June 30, 1940, as taken by me from the original records of The City of Coral Gables, and the statement of future necessary levies, was compiled by me in accordance with the terms of the several judgments involved.

In Witness Whereof, I have hereunto set my hand and the official seal of The City of Coral Gables, Florida, this 18th day of January, 1941.

G. N. SHAW,
City Clerk and Director of Finance.

(Seal)

EXHIBIT No. 21.

Filed Jan. 20, 1941, F. M. Hudson, Master.

The City of Coral Gables.

Statement of Maturities of Unrefunded Bonds as of June 30, 1940.

	Bonds	Interest
Past due June 30, 1940	$66,000.00	$185,516.67
Maturing through June 30, 1941....	47,000.00	
June 30, 1942....	27,000.00	
June 30, 1943....	9,000.00	
June 30, 1944....	12,000.00	
June 30, 1945....	3,000.00	
June 30, 1946....	14,000.00	
June 30, 1947....	38,000.00	
June 30, 1948....	6,000.00	
June 30, 1949....	3,000.00	
June 30, 1950....	12,000.00	
June 30, 1951....	2,000.00	
June 30, 1952....	48,000.00	
June 30, 1953....	2,000.00	
June 30, 1954....	8,000.00	
June 30, 1955....	6,000.00	
June 30, 1956....	21,000.00	
June 30, 1957....	2,000.00	
	$326,000.00	$185,516.67

Amount of interest accruing annually upon above bonds ..... $19,270.00.

Since the above date, $5,000 of bonds maturing in 1954 have been refunded, reducing the total principal and the principal shown for that year by that amount, and reducing the above past due interest $2,880 to $182,636.67, and reducing the amount of subsequent annual interest accrual to $18,970.00.

I, G. N. Shaw, Clerk and Director of Finance of The City of Coral Gables, Florida, Do Hereby Certify that the above is a true statement of the default and future maturity situation of the unrefunded bonds of The City of Coral Gables, as of June 30, 1940.

Witness my hand and the official seal of The City of Coral Gables, Florida, this 18th day of January, 1941.

G. N. SHAW,
City Clerk and Director of Finance.

(Seal)

On March 4, 1941 Petitioner's Evidentiary Exhibit 30-A was filed before Special Master in words and figures as follows, to-wit:

EXHIBIT 30a—(As Substitute for Exh. 30.)

Filed March 4, 1941, F. M. HUDSON, Master.

The City of Coral Gables.

Statement of Maturities of Presently Outstanding unrefunded Bonds; Required Amounts to Pay Existing Mandatory Writs for Special Levies; and Millages Required Therefor on 3½% Growth Rate Schedule Basis.

Fiscal Year	Total Bonds and Bond Interest	Required Millage	Existing Mandatory Levies (Interest Included)	Required Millage	Total Required Millage	Total Millage if Operations Maintained as at Present	If Total Millage Held at 22, Millage Remaining for Operations
1940-41:							
Previously matured....	$250,052.50	11.46					
Maturing during year..	61,012.50	2.80					
Total 1940-41.....	$311,065.00	14.26	$27,630.78	1.27	15.53	36.02	.82
1941-42	39,117.50	1.74	26,755.09	1.19	2.93	23.42	13.42
1942-43	19,772.50	.85	25,919.40	1.12	1.97	23.40	13.44
1943-44	22,182.50	.93	19,673.29	.83	1.76	23.19	13.65
1944-45	12,755.00	.52	17,692.63	.72	1.24	22.67	14.17
1945-46	23,295.00	.92	16,483.42	.65	1.57	23.00	13.84

1946-47	45,865.00	2.17	16,001.01	.61	2.78	24.21	12.63	
1947-48	12,517.50	.47	15,518.60	.58	1.05	22.95	13.89	
1948-49	9,220.00	.33	15,036.19	.54	.87	22.77	14.07	
1949-50	19,100.00	.67	4,469.17	.16	.83	22.73	14.11	
1950-51	7,260.00	.25	.....	..	.25	22.15	14.69	
1951-52	51,820.00	1.70	.....	..	1.70	23.60	13.24	
1952-53	4,270.00	.14	.....	..	.14	22.04	14.80	
1953-54	9,970.00	.31	.....	..	.31	22.21	14.63	
1954-55	7,550.00	.23	.....	..	.23	22.13	14.71	
1955-56	21,800.00	.63	.....	..	.63	22.53	14.31	
1956-57	2,060.00	.06	.....	..	.06	21.96	14.88	
	$619,620.00		$185,179.58					

On March 3, 1941, Petitioner's Evidentiary Exhibit 43 was filed before the Special Master in words and figures as follows, to-wit:

EXHIBIT 43.

Filed March 3, 1941, F. M. Hudson, Master.

In the District Court of the United States for the Southern District of Florida, Miami Division.

In the Matter of:

The City of Coral Gables, Florida.

In Bankruptcy No. 1967.

Populations of Several Municipalities of Dade County Taken From the Department of Commerce Bureau of Census, Washington, D. C., Released for Use of Morning Papers on January 9, 1941, Relating to the Population of the State of Florida.

Final Figures: 1940, Identified as "Series P-2, No. 34 (Al-9, G-30)" and from the printed publication of the Sixth Census of the State of Florida, 1935, published by Nathan Bayo, Commissioner of Agriculture, page 76 thereof, Table 22.

Name of City	Census U. S. 1930	State 1935 Census	U. S. 1940 Census
Coral Gables	5,697	6,747	8,294
Hialeah	2,600	3,168	3,958
Miami Shores	612	693	1,956
Miami Springs	402	443	898
North Miami	...	1,354	1,973
North Miami Beach	...	522	871
Opa-Locka	339	522	497
South Miami	1,160	1,690	2,408
Surfside	...	...	295
Miami	110,637	127,600	172,172
Miami Beach	6,494	13,330	28,012

Offered for filing in the Record by the Petitioner in lieu of the above mentioned printed documents, which were exhibited at the hearing.

On June 24, 1941, Petitioner's Evidentiary Exhibit No. 49 was filed before the Special Master in words and figures as follows, to-wit:

1622 PET. EX. 49.

Filed June 24, 1941. F. M. Hudson, Master.

In the Circuit Court of the Eleventh Judicial Circuit in and for the State of Florida, County of Dade.

State of Florida, ex rel, American National Bank of Nashville, Tennessee, a National banking corporation, Relator,

vs. No. 18569.

City of Coral Gables, a municipal corporation of the State of Florida; Paul D. McGarry, as Mayor of said city; Hollis Rinehart, Jr., W. Keith Phillips, Joe Whitley and P. J. O'Shaughnessy, as City Commissioners of said city; A. B. Curry, as City Manager of said city, and G. N. Shaw, as Clerk and Director of Finance of said city, Respondents.

Alternative Writ of Mandamus.

State of Florida,

To the above named Respondents:

Whereas, it has been made to appear by Petition of the Relator, American National Bank of Nashville, Tennessee, a National banking corporation, as follows, to-wit:

Relator, American National Bank of Nashville, Tennessee, now brings this Petition against City of Coral Gables, a municipal corporation of the State of Florida; Paul D. McGarry, as Mayor of said City; Hollis Rinehart, Jr., W. Keith Phillips, Joe Whitley and P. J. O'Shaughnessy, as City Commissioners of said City; A. B. Curry, as City Manager of said City, and G. N. Shaw, as Clerk and Director of Finance of said City, for the purpose of securing a Writ of Mandamus, as shall be hereinafter more specifically prayed for, and in support of said relief to be asked for, sets out the following facts:

I.

That the City of Coral Gables is a municipal corporation regularly created and organized pursuant to the provisions of Chapters 10,418 and 10,419 Special Acts of the Legislature of Florida, 1925 and Chapter 13,972, Special Acts of the Legislature of Florida, 1929 and acts amendatory thereof, and as such municipality, it is empowered and authorized to exercise all of the duties and functions of a municipality under the laws of said State and as particularly set out in said Acts of the Legislature. That said City of Coral Gables has been existing as a regularly organized municipal corporation pursuant to various acts of the Legislature of Florida since 1925 and has been a regularly organized and existing municipality under the name of City of Coral Gables at all times since the adoption of Special Act 10,418, Special Acts of the Legislature 1925.

II.

That as such municipality, duly created and organized, it had and exercised during the several years from 1925 to 1928 inclusive, the full right, power and authority to issue its municipal bonded obligations with interest cou-

pons attached, representing certain definite debts and obligations assumed and owed by said municipality at the time and dates hereinafter set out.

III.

That being thus empowered and authorized by the laws of the State of Florida and particularly by the provisions of those charter rights, duties and powers existing at that time, it did, on January 1, 1927, execute and issue a series of writings obligatory in the form of negotiable coupon bonds which were designated each and severally:

United States of America,
State of Florida,
County of Dade,
City of Coral Gables
Municipal Improvement Bond.

bearing date the first day of January, 1927, and maturing serially over a period of years according to the dates of maturities as therein severally set forth; in each of which bonds, said City of Coral Gables, for value received, acknowledged itself indebted to, and promised to pay to, the bearer thereof the principal amount of One Thousand Dollars on the maturity date therein specified, together with interest thereon at the rate of six per centum per annum, payable semi-annually on the first days of January and July of each year; and for the payment whereof, both principal and interest, the full faith and credit of said City were therein and thereby irrevocably pledged.

IV.

In and by each of said bonds, the defendant City of Coral Gables recited and declared that said bond was one

of a series issued by said City for the purpose of paying the cost of a certain permanent municipal improvement, under the authority of and in full compliance with Section 47 of the Charter of said City, as amended, and pursuant to an ordinance duly passed by the City Commission and approved by the vote of a majority of the legally qualified voters of said City voting at an election legally called and held; and further certified and recited that all acts, conditions and things required to happen, exist and be performed, precedent to and in the issuance of said bond, had happened, did exist and had been performed in due time, form and manner as required by the Charter of said City and the laws and Constitution of Florida; that the total indebtedness of said City, including said bond, did not exceed any constitutional or statutory limitation thereon; and that provision had been made for the levy and collection of a direct annual tax upon all taxable property within said City sufficient to pay the principal and interest of said bond as the same became due.

V.

The defendant City of Coral Gables caused each of said bonds to be signed by its Mayor and City Clerk, under the seal of said City, and said bonds to be dated the first day of January, 1927; all of which more fully appears in a true copy of one of said bonds, which is attached hereto and marked "Exhibit A".

VI.

Each of said bonds, and the issue of which it formed a part, was validated and confirmed by decree of the Circuit Court of the Eleventh Judicial Circuit of the State of Florida in and for Dade County, rendered the

9th day of February, 1927, and the Clerk of said Court did affix his certificate of such validation to each of said bonds.

VII.

In order to evidence the several semi-annual installments of interest before maturities on said bonds, the defendant City of Coral Gables also made, executed and delivered with each of said bonds, certain interest coupons, which were thereto annexed, said coupons being executed with the facsimile signature of the City Clerk, and in and by each of said coupons said City promised to pay to the bearer thereof the sum of $30.00 on the due date thereof and recited that same represented the semi-annual interest due that day on the bond to which it was attached, all of which more fully appears in a true copy of one of said coupons which is attached hereto, marked "Exhibit B".

VIII.

The Relator is the bearer and holder in due course of two thousand four hundred fifty-three (2,453) interest coupons, which were issued by the defendant City of Coral Gables with, and attached to, said bonds, and which are past due and unpaid; the said past due and unpaid coupons being described as follows:

43 cpns., No. 7, due 7/1/30, from Bonds 169-171, inc., 839-841, inc., 1527, 1534-1536, inc., 1626-1630, inc., & 1637-1641, inc., 4030; 4224, 4227, 4228, 4239, 4252, 4253, 4263-4272, inc., 4283, 4335, 4347-4350, inc.

44 cpns., No. 8, due 1/1/31, from Bonds 169-171, inc., 179, 839-841, inc., 1527, 1534-1536, inc., 1626-1630, inc., & 1637-1641, inc., 4030; 4224, 4227, 4228, 4239, 4283, 4335, 4347-4350, inc.

57 Cpns., No. 9, due 7/1/31, from Bonds 839-841, inc., 1527, 1534-1536, inc., 1626-1630, inc., & 1637-1641, inc., 3055; 3730-3740, inc., 3745-3747, inc., 3832, 3833, 4030, 4224, 4227, 4228, 4239, 4252, 4253, 4263-4272, inc., 4283, 4335, 4347-4350, inc.

146 Cpns. No. 10, due 1/1/32, from Bonds 677; 839-841, inc., 1054-1058, inc., 1064; 1119, 1323-1325, inc., 1424, 1425, 1426, 1491, 1527, 1534-1536, inc., 1579, 1580, 1625, 1626-1630, inc., 1637-1641, inc., 1707-1715, inc., 1898, 1899, 2192, 2256, 2274, 2582, 2650-2652, inc., 2815, 2940, 2950, 2984, 2985, 2992, 2994, 3017-3020, inc., 3055, 3064, 3065, 3205-3207, inc., 3422, 3423, 3730-3740, inc.,

3741, 3745-3747, inc., 3751,
3810-3819, inc.,
3823-3826, inc.,
3828-3831, inc.,
3832, 3833, 3834-3842, inc.,
3853, 3854, 4030, 4013,
4224, 4227, 4228, 4239, 4252,
4253, 4259, 4260, 4263-4272, inc.,
4283, 4335, 4347-4350, inc.,
4372.

146 cpns., No. 11, due 7/1/32, from Bonds 677; 839-841, inc.,
1054-1058, inc., 1064;
1119, 1323-1325, inc.,
1424, 1425, 2426, 1491,
1527, 1534-1536, inc.,
1579, 1580, 1625, 1626-1630, inc.,
1637-1641, inc.,
1707-1715, inc.,
1898, 1899, 2192, 2256, 2274,
2582, 2650-2652, inc., 2815,
2940, 2950, 2984, 2985, 2992,
2994, 3017-3020, inc., 3055,
3064, 3065, 3205-3207, inc.,
3422, 3423, 3730-3740, inc.,
3741, 3745-3747, inc., 3751,
3810-3819, inc.,
3823-3826, inc.,
3828-3831, inc.,
3832, 3833, 3834-3842, inc.,
3853, 3854, 4030, 4013,
4224, 4227, 4228, 4239, 4252,
4253, 4259, 4260, 4263-4272, inc.,
4283, 4335, 4347-4350, inc.,
4372.

146 cpns., No. 12, due 1/1/33, from Bonds 677; 839-841, inc., 1054-1058, inc., 1064, 1119, 1323-1325, inc., 1424, 1425, 1426, 1491, 1527, 1534-1536, inc., 1579, 1580, 1625, 1626-1630, inc., 1637-1641, inc., 1707-1715, inc., 1898, 1899, 2192, 2256, 2274, 2582, 2650-2652, inc., 2815, 2940, 2950, 2984, 2985, 2992, 2994, 3017-3020, inc., 3055, 3064, 3065, 3205-3207, inc., 3422, 3423, 3730-3740, inc., 3741, 3745-3747, inc., 3751, 3810-3819, inc., 3823-3826, inc., 3828-3831, inc., 3832, 3833, 3834-3842, inc., 3853, 3854, 4030, 4013, 4224, 4227, 4228, 4239, 4252, 2992, 3017-3020, inc., 3055, 4283, 4335, 4347-4350, inc., 4372.

146 cpns., No. 13, due 7/1/33, from Bonds 677; 839-841, inc., 1054-1058, inc., 1064, 1119, 1323-1325, inc., 1424, 1425, 1426, 1491, 1527, 1534-1536, inc., 1579, 1580, 1625, 1626-1630, inc., 1637-1641, inc., 1707-1715, inc., 1898, 1899, 2192, 2256, 2274,

2582, 2650-2652, inc., 2815,
2940, 2950, 2984, 2985, 2992,
4253, 4259, 4260, 4263-4272, inc.,
3064, 3065, 3205-3207, inc.,
3422, 3423, 3730-3740, inc.,
3741, 3745-3747, inc., 3751,
3810-3819, inc.,
3823-3826, inc.,
3828-3831, inc.,
3832, 3833, 3834-3842, inc.,
3853, 3854, 4030, 4013,
4224, 4227, 4228, 4239, 4252,
4253, 4259, 4260, 4263-4272, inc.,
4283, 4335, 4347-4350, inc.,
4372.

146 cpns., No. 14, due 1/1/34, from Bonds 677; 839-841, inc.,
1054-1058, inc., 1064,
1119, 1323-1325, inc.,
1424, 1425, 1426, 1491,
1527, 1534-1536, inc.,
1579, 1580, 1625, 1626-1630, inc.,
1637-1641, inc.,
1707-1715, inc.,
1898, 1899, 2192, 2256, 2274,
2582, 2650-2652, inc., 2815,
2940, 2950, 2984, 2985, 2992,
2994, 3017-3020, inc., 3055,
3064, 3065, 3205-3207, inc.,
3422, 3423, 3730-3740, inc.,
3741, 3745-3747, inc., 3751,
3810-3819, inc.,
3823-3826, inc.,
3828-3831, inc.,
3832, 3833, 3834-3842, inc.,

3853, 3854, 4030, 4013,
4224, 4227, 4228, 4239, 4252,
4253, 4259, 4260, 4263-4272, inc.,
4283, 4335, 4347-4350, inc.,
4372.

146 cpns., No. 15, due 7/1/34, from Bonds 677; 839-841, inc.,
1054-1058, inc., 1064,
1119, 1323-1325, inc.,
1424, 1425, 1426, 1491,
1527, 1534-1536, inc.,
1579, 1580, 1625, 1626-1630, inc.,
1637-1641, inc.,
1707-1715, inc.,
1898, 1899, 2192, 2256, 2274,
2582, 2650-2652, inc., 2815,
2940, 2950, 2984, 2985, 2992,
2994, 3017-3020, inc., 3055,
3064, 3065, 3205-3207, inc.,
3422, 3423, 3730-3740, inc.,
3741, 3745-3747, inc., 3751,
3810-3819, inc.,
3823-3826, inc.,
3828-3831, inc.,
3832, 3833, 3834-3842, inc.,
3853, 3854, 4030, 4013,
4224, 4227, 4228, 4239, 4252,
4253, 4259, 4260, 4263-4272, inc.,
4283, 4335, 4347-4350, inc.,
4372.

146 cpns., No. 16, due 1/1/35, from Bonds 677; 839-841, inc.,
1054-1058, inc., 1064,
1119, 1323-1325, inc.,

1424, 1425, 1426, 1491,
1527, 1534-1536, inc.,
1579, 1580, 1625, 1626-1630, inc.,
1637-1641, inc.,
1707-1715, inc.,
1898, 1899, 2192, 2256, 2274,
2582, 2650-2652, inc., 2815,
2940, 2950, 2984, 2985, 2992,
2994, 3017-3020, inc., 3055, 3064,
3065, 3205-3207, inc., 3422, 3423,
3730-3740, inc., 3741, 3745-3747, inc.,
3751, 3810-3819, inc., 3823-3826, inc.,
3828-3831, inc., 3832, 3833,
3834-3842, inc., 3853, 3854, 4030,
4013, 4224, 4227, 4228, 4239, 4252,
4253, 4259, 4260, 4263-4272, inc.,
4283, 4335, 4347-4350, inc., 4372.

146 cpns., No. 17, due 7/1/35, from Bonds 677; 839-841, inc., 1054-1958, inc.,
1064, 1119, 1323-1325, inc., 1424,
1425, 1426, 1491, 1527, 1534-1536, inc.,
1579, 1580, 1625, 1626-1630, inc.,
1637-1641, inc., 1707-1715, inc.,
1898, 1899, 2192, 2256, 2274, 2582,
2650-2652, inc., 2815, 2940, 2950,
2984, 2985, 2992, 2994, 3017-3020, inc.,
3055, 3064, 3065, 3205-3207, inc.,
3422, 3423, 3730-3740, inc., 3741,
3745-3747, inc., 3751, 3810-3819, inc.,
3823-3826, inc., 3828-3831, inc.,
3832, 3833, 3834-3842, inc.,
3853, 3854, 4030, 4013,
4224, 4227, 4228, 4239, 4252,
4253, 4259, 4260, 4263-4272, inc.,
4283, 4335, 4347-4350, inc., 4372.

146 cpns., No. 18, due 1/1/36, from Bonds 677; 839-841, inc., 1054-1058, inc., 1064, 1119, 1323-1325, inc., 1424, 1425, 1426, 1491, 1527, 1534-1536, inc., 1579, 1580, 1625, 1626-1630, inc., 1637-1641, inc., 1707-1715, inc., 1893, 1899, 2192, 2256, 2274, 2582, 2650-2652, inc., 2815, 2940, 2950, 2984, 2985, 2992, 2994, 3017-3020, inc., 3055, 3064, 3065, 3205-3207, inc., 3422, 3423, 3730-3740, inc., 3741, 3745-3747, inc., 3751, 3810-3819, inc., 3823-3826, inc., 3828-3831, inc., 3832, 3833, 3834-3842, inc., 3853, 3854, 4030, 4013, 4224, 4227, 4228, 4239, 4252, 4253, 4259, 4260, 4263-4272, inc., 4283, 4335, 4347-4350, inc., 4372.

147 cpns., No. 19, due 7/1/36, from Bonds 839-841, inc., 1054-1058, inc., 1064, 1348, 1119, 1323-1325, inc., 1424, 1425, 1426, 1491, 1527, 1534-1536, inc., 1579, 1580, 1625, 1626-1630, inc., 1637-1641, inc., 1707-1715, inc., 1898, 1899, 2192, 2256, 2274, 2582, 2650-2652, inc., 2815, 2940, 2950, 2984, 2985, 2992, 2994, 3017-3020, inc., 3055, 3064, 3065, 3205-3207, inc., 3422, 3423, 3730-3740, inc., 3741, 3745-3747, inc., 3751,

3810-3819, inc.,
3823-3826, inc.,
3828-3831, inc.,
3832, 3833, 3834-3842, inc.,
3853, 3854, 3887, 4030, 4013,
4224, 4227, 4228, 4239, 4252,
4253, 4259, 4260, 4263-4272, inc.,
4283, 4335, 4347-4350, inc.,
4372.

147 cpns., No. 20, due 1/1/37, from Bonds 839-841, inc., 1054-1058, inc.,
1064, 1323-1325, inc., 1348,
1424, 1425, 1426, 1491,
1527, 1534-1536, inc.,
1579, 1580, 1625, 1626-1630, inc.,
1637-1641, inc.,
1707-1715, inc.,
1898, 1899, 2192, 2256, 2274,
2582, 2650-2652, inc., 2815,
2940, 2950, 2984, 2985, 2992,
2994, 3017-3020, inc., 3055,
3064, 3065, 3205-3207, inc.,
3422, 3423, 3730-3740, inc.,
3741, 3745-3747, inc., 3751,
3810-3819, inc.,
3823-3826, inc.,
3828-3831, inc.,
3832, 3833, 3834-3842, inc.,
3853, 3854, 3887, 4030, 4013,
4224, 4227, 4228, 4239, 4252,
4253, 4259, 4260, 4263-4272, inc.,
4283, 4335, 4347-4350, inc.,
4372.

144 cpns., No. 21, due 7/1/37, from Bonds 1054-1058, inc., 1064, 1119, 1323-1325, inc., 1348, 1424, 1425, 1426, 1491, 1527, 1534-1536, inc., 1579, 1580, 1625, 1626-1630, inc., 1637-1641, inc., 1707-1715, inc., 1898, 1899, 2192, 2256, 2274, 2582, 2650-2652, inc., 2815, 2940, 2950, 2984, 2985, 2992, 2994, 3017-3020, inc., 3055, 3064, 3065, 3205-3207, inc., 3422, 3423, 3730-3740, inc., 3741, 3745-3747, inc., 3751, 3810-3819, inc., 3823-3826, inc., 3828-3831, inc., 3832, 3833, 3834-3842, inc., 3853, 3854, 3887, 4030, 4013, 4224, 4227, 4228, 4239, 4252, 4253, 4259, 4260, 4263-4272, inc., 4283, 4335, 4347-4350, inc., 4372.

144 cpns., No. 22, due 1/1/38, from Bonds 1054-1058, inc., 1064, 1119, 1323-1325, inc., 1348, 1424, 1425, 1426, 1491, 1527, 1534-1536, inc., 1579, 1580, 1625, 1626-1630, inc., 1637-1641, inc., 1707-1715, inc., 1898, 1899, 2192, 2256, 2274, 2582, 2650-2652, inc., 2815, 2940, 2950, 2984, 2985, 2992, 2994, 3017-3020, inc., 3055,

3064, 3065, 3205-3207, inc.,
3422, 3423, 3730-3740, inc.,
3741, 3745-3747, inc., 3751,
3810-3819, inc.,
3823-3826, inc.,
3828-3831, inc.,
3832, 3833, 3834-3842, inc.,
3853, 3854, 3887, 4030, 4013,
4224, 4227, 4228, 4239, 4252,
4253, 4259, 4260, 4263-4272, inc.,
4283, 4335, 4347-4350, inc.,
4372.

138 cpns., No. 23, due 7/1/38, from Bonds 1119, 1323-1325, inc., 1348,
1424, 1425, 1426, 1491,
1527, 1534-1536, inc.,
1579, 1580, 1625, 1626-1630, inc.,
1637-1641, inc.,
1707-1715, inc.,
1898, 1899, 2192, 2256, 2274,
2582, 2650-2652, inc., 2815,
2940, 2950, 2984, 2985, 2992,
2994, 3017-3020, inc., 3055,
3064, 3065, 3205-3207, inc.,
3422, 3423, 3730-3740, inc.,
3741, 3745-3747, inc., 3751,
3810-3819, inc.,
3823-3826, inc.,
3828-3831, inc.,
3832, 3833, 3834-3842, inc.,
3853, 3854, 3887, 4030, 4013,
4224, 4227, 4228, 4239, 4252,
4253, 4259, 4260, 4263-4272, inc.,
4283, 4335, 4347-4350, inc.,
4372.

138 cpns., No. 24, due 1/1/39, from Bonds 1119, 1323-1325, inc., 1348, 1424, 1425, 1426, 1491, 1527, 1534-1536, inc., 1579, 1580, 1625, 1626-1630, inc., 1637-1641, inc., 1707-1715, inc., 1898, 1899, 2192, 2256, 2274, 2582, 2650-2652, inc., 2815, 2940, 2950, 2984, 2985, 2992, 2992, 3017-3020, inc., 3055, 3064, 3065, 3205-3207, inc., 3422, 3423, 3730-3740, inc., 3741, 3745-3747, inc., 3751, 3810-3819, inc., 3823-3826, inc., 3828-3831, inc., 3832, 3833, 3834-3842, inc., 3853, 3854, 3887, 4030, 4013, 4224, 4227, 4228, 4239, 4252, 4253, 4259, 4260, 4263-4272, inc., 4283, 4335, 4347-4350, inc., 4372.

137 cpns., No. 25, due 7/1/39, from Bonds 1054-1058, inc., 1064, 1323-1326, inc., 1348, 1424, 1425, 1426, 1491, 1527, 1534-1536, inc., 1579, 1580, 1625, 1626-1630, inc., 1637-1641, inc., 1707-1715, inc., 1898, 1899, 2192, 2256, 2274, 2582, 2650-2652, inc., 2815, 2940, 2950, 2984, 2985, 2992, 2994, 3017-3020, inc., 3055,

3064 3065, 3205-3207, inc.,
3422, 3423, 3730-3740, inc.,
3741, 3745-3747, inc., 3751,
3810-3819, inc.,
3823-3826, inc.,
3828-3831, inc.,
3832, 3833, 3834-3842, inc.,
3853, 3854, 3887, 4030, 4013,
4224, 4227, 4228, 4239, 4252,
4253, 4259, 4260, 4263-4272, inc.,
4283, 4335, 4347-4350, inc.,
4372.

the said two thousand four hundred fifty-three (2,453) past due and unpaid interest coupons amounting, in the aggregate, to the sum of Seventy-three Thousand Five Hundred Ninety Dollars ($73,590.00).

IX.

On or about the first day of December, 1925, the respondent City of Coral Gables, a municipal corporation as aforesaid, made, executed, sold and delivered a series of writings obligatory in the form of negotiable coupon bonds which were designated, each and severally,

United States of America
State of Florida
County of Dade
City of Coral Gables
Permanent Improvement Bond

bearing date the first day of December, 1925, and maturing serially over a period of years according to the dates of maturities as therein severally set forth; in each of which bonds, said City of Coral Gables, for value re-

ceived, acknowledged itself indebted to, and promised to pay to, the bearer thereof the principal amount of One Thousand Dollars on the maturity date therein specified, together with interest thereon at the rate of five and one-half per centum per annum, payable on the first days of June and December of each year; and for the payment whereof, both principal and interest, the full faith and credit of said City were therein irrevocably pledged.

X.

In and by each of said bonds, the respondent City of Coral Gables recited and declared that said bond was one of a series issued by said City for the purpose of paying the cost of a certain permanent municipal improvement, under the authority of and in full compliance with the Charter of said City, and ordinances duly passed by the City Commission thereof, and further certified and recited that all acts, conditions and things required by the Constitution and laws of Florida to happen, exist and be performed precedent to and in the issuance of said bond, had happened, did exist and had been performed in regular and due form and time as so required; that the total indebtedness of said City, including said bond, did not exceed any constitutional or statutory limitation thereon; and that provision had been made for the levy and collection of a direct annual tax sufficient to meet the payment of the principal and interest of said bond as the same fell due.

XI.

The respondent City of Coral Gables caused each of said bonds to be signed by its Mayor and City Clerk, under the seal of said City, and said bonds to be dated the first

day of December, 1925; all of which more fully appears in a true copy of one of said bonds, which is attached hereto and marked "Exhibit C".

XII.

In order to evidence the several semi-annual installments of interest before maturities on said bonds, the respondent City of Coral Gables also made, executed and delivered with each of said bonds, certain interest coupons, which were thereto annexed, said coupons being executed with the facsimile signature of the City Clerk of said City, and in and by each of said coupons said City promised to pay to the bearer thereof the sum of $27.50 on the due date thereof and recited that same represented the interest due that day on the bond to which it was attached, all of which more fully appears in a true copy of one of said coupons which is attached hereto, marked "Exhibit D".

XIII.

The Relator is the bearer and holder in due course of two hundred ninety-eight (298) interest coupons, which were issued by the respondent City of Coral Gables with, and attached to, said bonds, and which are past due and unpaid; the said past due and unpaid coupons being described as follows:

7 cpns. No. 10, due 12/1/30, from Bonds	233, 234, 281-285, inc.
7 cpns. No. 11, due 6/1/31, from Bonds	233, 234, 281-285, inc.
12 cpns. No. 12, due 12/1/31, from Bonds	140, 182, 183, 185, 199, 233, 234, 251-255, inc.,

17 cpns. No. 13, due 6/1/32, from Bonds 140, 182, 183, 185, 199,

17 cpns. No. 14, due 12/1/32, from Bonds ..... 140, 182, 183, 185, 199, 251-255, inc. 281-285, inc.

17 cpns. No. 15, due 6/1/33, from Bonds ..... 140, 182, 183, 185, 199, 233, 234, 251-255, inc., 281-285, inc.

17 cpns. No. 16, due 12/1/33, from Bonds ..... 140, 182, 183, 185, 199, 233, 234, 251-255, inc., 281-285, inc.

17 cpns. No. 17, due 6/1/34, from Bonds ..... 140, 182, 183, 185, 199, 233, 234, 251-255, inc., 281-285, inc.

17 cpns. No. 18, due 12/1/34, from Bonds ..... 140, 182, 183, 185, 199, 233, 234, 251-255, inc., 281-285, inc.

17 cpns. No. 19, due 6/1/35, from Bonds ..... 140, 182, 183, 185, 199, 233, 234, 251-255, inc., 281-285, inc.

17 cpns. No. 20, due 12/1/35, from Bonds ..... 140, 182, 183, 185, 199, 233, 234, 251-255, inc., 281-285, inc.

17 cpns. No. 21, due 6/1/36, from Bonds ..... 140, 182, 183, 185, 199, 233, 234, 251-255, inc., 281-285, inc.

17 cpns. No. 22, due 12/1/36, from Bonds ..... 140, 182, 183, 185, 199, 233, 234, 251-255, inc., 281-285, inc.

17 cpns. No. 23, due 6/1/37, from Bonds ..... 140, 182, 183, 185, 199, 233, 234, 251-255, inc., 281-285, inc.

17 cpns. No. 24, due 12/1/37, from Bonds ..... 140, 182, 183, 185, 199, 233, 234, 251-255, inc., 281-285, inc.

17 cpns. No. 25, due 6/1/38, from Bonds ..... 140, 182, 183, 185, 199, 233, 234, 251-255, inc., 281-285, inc.

17 cpns. No. 26, due 12/1/38, from Bonds ..... 140, 182, 183, 185, 199, 233, 234, 251-255, inc., 281-285, inc.

17 cpns. No. 27, due 6/1/39, from Bonds ..... 140, 182, 183, 185, 199, 233, 234, 251-255, inc., 281-285, inc.

17 cpns. No. 28, due 12/1/39, from Bonds ..... 140, 182, 183, 185, 199, 233, 234, 251-255, inc., 281-285, inc.

the said two hundred ninety-eight (298) past due and unpaid interest coupons amounting, in the aggregate, to the sum of Eight Thousand One Hundred Ninety-five Dollars ($8,195.00).

XIV.

On or about the fifteenth day of June, 1928, the respondent City of Coral Gables, a municipal corporation as aforesaid, made, executed, sold and delivered a series of writings obligatory in the form of negotiable coupon bonds which were designated, each and severally,

United States of America
State of Florida
County of Dade
City of Coral Gables
Refunding Bond,

bearing date the fifteenth day of June, 1928, and maturing serially over a period of years according to the dates of maturities as therein severally set forth; in each of which bonds, said City of Coral Gables, for value received, acknowledged itself indebted to, and promised to pay to, the bearer thereof the principal amount of One Thousand Dollars on the maturity date therein specified, together with interest thereon at the rate of six per centum per annum, payable semi-annually on the fifteenth days of June and December of each year; and for the payment whereof, both principal and interest, the full faith and credit of said City were therein and thereby irrevocably pledged.

XV

In and by each of said bonds, the respondent City of Coral Gables recited and declared that said bond was one of a series of like date and amount issued by said City for the purpose of paying and refunding valid subsisting bonds of said City for the payment of which the credit of said City was pledged, and was issued under the authority of and in full compliance with an Act of the Legislature of Florida, approved June 6, 1927, known as House Bill No. 1309, and a resolution duly adopted by the Commission of said City; and further certified and recited that all acts, conditions and things required to happen, exist and be performed, precedent to and in the issuance of said bond, had happened, did exist and had been performed in due time, form and manner as required by the laws and Constitution of Florida; that the total indebtedness of said City, including said bond, did not exceed, and that the total indebtedness of said City at the creation of the debt refunded thereby including said debt, did not then exceed, any constitutional or statutory limitation thereon; and that provision had been made for the levy and collection of a direct annual tax upon all taxable property within said City sufficient to pay the principal and interest of said bond as the same became due.

XVI.

The respondent City of Coral Gables caused each of said bonds to be signed by its Mayor and City Clerk, under the seal of said City, and said bonds to be dated the fifteenth day of June, 1928; all of which more fully appears in a true copy of one of said bonds, which is attached hereto and marked "Exhibit E".

XVII.

Each of said bonds, and the issue of which it formed a part, was validated and confirmed by decree of the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, rendered the 4th day of June, 1928, and the Clerk of said Court did affix his certificate of such validation to each of said bonds.

XVIII.

In order to evidence the several semi-annual installments of interest before maturities on said bonds, the respondent City of Coral Gables also made, executed and delivered with each of said bonds, certain interest coupons, which were thereto annexed, said coupons being executed with the facsimile signature of the City Clerk of said City, and in and by each of said coupons said City promised to pay to the bearer thereof the sum of $30.00 on the due date thereof and recited that same represented the semi-annual interest due that day on the bond to which it was attached, all of which more fully appears in a true copy of one of said coupons which is attached hereto, marked "Exhibit F".

XIX.

The Respondent is the bearer and holder in due course of four hundred sixty eight (468) interest coupons, which were issued by the respondent City of Coral Gables, with and attached to, said bonds, and which are past due and unpaid; the said past due and unpaid coupons being described as follows:

20 cpns. No. 7, due 12/15/31,
from Bonds ..... 356-363, inc., 369, 370,
833-842, inc.

28 cpns. No. 8, due 6/15/32, from Bonds ..... 303-307, inc., 356-363, 369, 370, 689-691, inc., 833-842, inc.

28 cpns. No. 9, due 12/15/32, from Bonds ..... 303-307, inc., 356-363, 369, 370, 689-691, inc., 833-842, inc.

28 cpns. No. 10, due 6/15/33, from Bonds ..... 303-307, inc., 356-363, 369, 370, 689-691, inc., 833-842, inc.

28 cpns. No. 11, due 12/15/33, from Bonds ..... 303-307, inc., 356-363, 369, 370, 689-691, inc., 833-842, inc.

28 cpns. No. 12, due 6/15/34, from Bonds ..... 303-307, inc., 356-363, 369, 370, 689-691, inc., 833-842, inc.

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28 cpns. No. 13, due 12/15/34, from Bonds ..... 303-307, inc., 356-363, inc., 369, 370, 689-691, inc., 833-842, inc.

28 cpns. No. 14, due 6/15/35, from Bonds ..... 303-307, inc., 356-363, inc., 369, 370, 689-691, inc., 833-842, inc.

28 cpns. No. 15, due 12/15/35, from Bonds ..... 303-307, inc., 356-363, inc., 369, 370, 689-691, inc., 833-842, inc.

28 cpns. No. 16, due 6/15/36, from Bonds ..... 303-307, inc., 356-363, inc., 369, 370, 689-691, inc., 833-842, inc.

28 cpns. No. 17, due 12/15/36, from Bonds ..... 303-307, inc., 356-363, inc., 369, 370, 689-691, inc., 833-842, inc.

28 cpns. No. 18, due 6/15/37, from Bonds ..... 303-307, inc., 356-363, inc., 369, 370, 689-691, inc., 833-842, inc.

28 cpns. No. 19, due 12/15/37, from Bonds ..... 303-307, inc., 356-363, inc., 369, 370, 689-691, inc., 833-842, inc.

28 cpns. No. 20, due 6/15/38, from Bonds ..... 303-307, inc., 356-363, inc., 369, 370, 689-691, inc., 833-842, inc.

28 cpns. No. 21, due 12/15/38, from Bonds ..... 303-307, inc., 356-363, inc., 369, 370, 689-691, inc., 833-842, inc.

28 cpns. No. 22, due 6/15/39, from Bonds ..... 303-307, inc., 356-363, inc., 369, 370, 689-691, inc., 833-842, inc.

28 cpns. No. 23, due 12/15/39, from Bonds ..... 303-307, inc., 356-363, inc., 369, 370, 689-691, inc., 833-842, inc.

said four hundred sixty eight (468) past due and unpaid interest coupons amounting, in the aggregate, to the sum of Fourteen Thousand and Forty Dollars ($14,040.00).

XX.

That each and every of the interest coupons held by the Relator, hereinbefore described, are long past due and unpaid; that all times have elapsed and all conditions have been performed to entitle Relator to maintain this action. That each and every of said coupons herein described were transferred and delivered to Relator prior to the institution of this suit and every transferor and assignor of such coupons to Relator severally purchased the bonds so assigned by them respectively for value.

XXI.

That it was the duty of the respondents, under the provisions of the Charter and laws hereinbefore mentioned, to provide funds for the payment of the interest coupons of the Relator, as the same came due. That the City of Coral Gables has not performed its duty as to Relator's coupons and has not provided a fund for the payment of said interest coupons of Relator and has not paid the interest coupons nor any part thereof.

XXII.

That the respondents, though requested so to do, have declined and refused to pay the said coupons held by Relator and have failed and refused to make provision for their payment in the manner prescribed by law.

XXIII.

That in and by the bonds from which Relator's coupons were detached, the City of Coral Gables did pledge its full faith and credit and agreed to exercise its inexhaustible taxing power to raise funds by taxation to pay the coupons of Relator, as the same respectively came due.

XXIV.

That the government authorities of the City of Coral Gables, in order to refund its then existing bonded debt, entered into an agreement, dated December 24, 1936, with the holders of such outstanding bonds as might be procured to consent thereto, and in and by said agreement, the City of Coral Gables obligated itself, among other things, to levy annually and collect a special tax at the rate of 6 mills for each of the fiscal years 1937-1938 to 1941-1942 inclusive; the proceeds of such tax levies to be immediately paid into a special fund known as the "issue of January 1, 1937 fund."

XXV.

The City further obligated itself, by the said agreement of December 24, 1936, to apply the moneys, so raised and placed in the said fund, to the payment of interest on the refunding bonds as that interest matured and to the servicing of refunding bonds and tax participation certificates

issued pursuant to the said agreement and to no other purpose.

XXVI.

The City has put the said agreement into force and effect and has issued its refunding bonds, dated January 1, 1937, and has voluntarily levied solely and exclusively, as prescribed in said agreement and not pursuant to any writ of mandamus, a special tax at the rate of 6 mills for each of the fiscal years 1937-1938 to 1939-1940 inclusive and has collected these taxes and has placed the proceeds thereof in the special fund known as the "issue of January 1, 1937 fund". That there is in the special fund a sufficient amount of moneys to pay and satisfy relator's coupons.

XXVII.

Relator avers and charges that the coupons held by it are detached from some of the issues of bonds for which the refunding bonds of 1937 were to be substituted. That the City, by the issuance of the bonds, coupons of which are held by the Relator, pledged its full faith and credit and exercised its inexhaustible taxing power to raise funds by taxation to pay the coupons of Relator, as the same respectively came due. That the refunding bonds of January 1, 1937, are continuations of the indebtedness existing prior to 1934 and are of the same class as coupons held by Relator.

XXVIII.

That the power of taxation so pledged for the payment of Relator's coupons is the power that is being exercised by the City in raising the special fund known as the

"issue of January 1, 1937 fund" and the power of taxation originally pledged has not been exercised to raise funds for the payment of relator's coupons, but has been exercised for the benefit of the Refunding Bonds of January 1, 1937, to the exclusion of the coupons held by Relator.

XXIX.

Relator further avers and charges that the City's governmental authorities have, by their agreement and annual appropriations aforementioned, and by their failure to provide funds for the payment of Relator's coupons, violated and impaired the obligation of Relator's contract, under which the bonds, from which Relator's coupons were taken, were issued. That the action of the Governmental authorities in preferring the refunding bonds of 1937, is a voluntary preference and violates and impairs the contract rights of the Relator, which said violations are inhibited and prohibited by the provisions of Section 17 of the Bill of Rights of the Constitution of the State of Florida and by the provisions of Section 10 of Article 1 of the Constitution of the United States.

XXX.

Relator further avers and charges that the City was without power to segregate and separate the funds so appropriated to the payment of interest on refunding bonds to the exclusion of Relator's interest coupons, and that by reason of such lack of power, the funds now on hand and attempted to be appropriated to the interest on refunding bonds, are applicable and available for the payment of the interest coupons held by Relator and are subject by reason of the writ under the "first come, first served" rule, to the payment and satisfaction of the coupons held by Relator.

XXXI.

That the limitation contained in the said agreement and appropriation ordinances aforesaid, is inoperative and ineffective and does not remove the funds from the operation of this writ and Relator is entitled to receive the moneys which are in the "Issue of January 1, 1937 fund".

XXXII.

That it was and still is the duty of the Respondents, in such manner as may be provided by law, to make available from the issue of January 1, 1937, fund the sum of $95,825.00 for the payment of relator's coupons and to pay the same to the Relator upon the presentation of the said coupons for payment.

XXXIII.

Now, Therefore, being willing that safe and speedy justice be done in the premises, this Court does hereby command that the Respondents, City of Coral Gables, a municipal corporation of the State of Florida; Paul D. McGarry, as Mayor of said city; Hollis Rinehart, Jr., W. Keith Phillips, Joe Whitley and P. J. O'Shaughnessy, as City Commissioners of said city; A. B. Curry, as City Manager of said city, and G. N. Shaw, as Clerk and Director of Finance of said City, in such manner as may be provided by law, to make available from the issue of January 1, 1937, fund the sum of $95,825.00 for the payment to the Relator, American National Bank of Nashville, Tennessee, as the bearer and holder in due course of the interest coupons hereinabove described, and to pay the same, in lawful money of the United States, forthwith to said Relator, upon the surrender of the above mentioned and described interest coupons, or in the alternative, that the Respondents be and appear before the Circuit Court of

the Eleventh Judicial Circuit in and for Dade County at the Court House in Miami, on the 5 day of January, 1940, and there show cause, if any they have, why said respondents should not comply with the commands of this Writ.

Witness the Honorable Paul D. Barns, Judge of the said Court, as also E. B. Leatherman, Clerk of said Court and the seal of said Court, in the said Court House, on this the 20th day of December, A. D. 1939.

E. B. LEATHERMAN,
As Clerk of the said Court,
By L. J. WOODARD,
Deputy Clerk.

True Copy. (Circuit Court Seal.)

1645 EX. "F".

Coupon.

No. 8. $30.00

On the fifteenth day of June, 1932, the City of Coral Gables, Florida, will pay to bearer at The Chase National Bank of the City of New York in New York City the sum of

Thirty Dollars

in gold coin as provided in and for the semi-annual interest then due upon its Refunding Bond, dated June 15, 1928, No. 837.

EDWIN G. BISHOP,
City Clerk.

1646 On December 17, 1941, Petitioner's Evidentiary Exhibit No. 53 was filed before the Special Master in words and figures as follows, to-wit:

PETITIONER'S EXHIBIT 53.

Filed Dec. 17, 1941, F. M. Hudson, Master.

The City of Coral Gables.

Statement of Debts, Listed in Exhibit "C" Accompanying Petition in Municipal Bankruptcy Case, Which Have Been Refunded Since the Filing of Said Petition, Showing Refunding Securities Exchanged Therefor.

To J. Kenneth Mathews:		
8/20/40	Issue 1-1-27.	
	Bond Nos. 3981/3983 incl.	$3,000.00
	Maturity 1-1-54.	
	Coupons matured to 1-1-37 10/20 incl.	990.00
		$3,990.00
Bonds	New Securities issued:	
	Bonds D7506/7508 incl.	1,500.00
Tax Participation Certif. Nos. 5813/5816 incl. & 14665		2,490.00
		$3,990.00
To William C. Weber:		
11/26/40	Issue 1-1-27	2,000.00
	Bond Nos. 4006/4007 incl.	
	Maturity date 1-1-54.	
	Coupons matured to 1-1-37 7/20 incl.	840.00
		2,840.00

New Securities issued:	
Bonds D7509/7510 incl	1,000.00
Tax Participation Certif. Nos. 5817/5819 incl. & 14666	1,840.00
	$2,840.00

On March 4, 1941, and subsequent dates Defendants' Exhibits Nos. 1, 2, 3, 5, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 35, 38, 43, 44, 45, 47, 48, 52, 55 and 57 were filed in evidence before Special Master in words and figures as follows, to-wit:

1647 DEFENDANT'S EXHIBIT 1.

For Identification. F. M. Hudson, Master.

This Agreement made and entered into, in duplicate originals, this 30th day of June, A. D. 1937, by and between The City of Coral Gables, A Municipal Corporation created and existing under the laws of the State of Florida, hereinafter sometimes referred to as the "City", and Carl L. V. Exselsen, hereinafter sometimes referred to as "Exselsen";

Witnesseth:

Whereas, the said Exselsen for the past evelen months has, at the request of the City, continuously devoted his time and services to evolving and negotiating for the City a debt readjustment and refunding program within the limits of the City's capacity to pay, which would prove acceptable not only to the City Commission but also the greater portion of its bond and other creditors; and

Whereas, a contract has been negotiated under date of February 3rd, 1937, between the City and Edwin H. Barker, Prentiss de V. Ross, and Sanders Shanks, Jr. (constituting a Bondholders' Protective Committee, organized and existing under Deposit Agreement dated January 22, 1931, as amended), in substance approving the terms and provisions of Debt Refunding Ordinance No. 269 enacted by the City Commission on December 23, 1936; and

Whereas, another contract dated as of December 24, 1936, has been entered into with the greater portion of the remaining bond and other creditors of the City who had withdrawn their bonds from, or refused to deposit their bonds and claims with the said "Barker Committee", also approving the terms and provisions of said Ordinance No. 269; and

Whereas, the City, contingent upon the consummation of a refunding program approved and put into effect by the City Commission, has agreed to pay said Exselsen, as part of his compensation, a fee of $40,000, said obligation to constitute a direct, general and unlimited obligation of the City payable out of general City funds derived from any source; and

Whereas, the City in the initial stages of the negotiations with its creditors (conducted subsequent to August 3, 1936), had agreed to make available and deliver to them all its delinquent tax assets covering any and all claims representing delinquent taxes and/or special assessments and/or tax certificates, tax deeds or other assets derived therefrom, and the City was advised that said assets were to be subject to a charge of Forty Thousand Dollars to be paid to Exselsen as a further part of this compensation

for services rendered or to be rendered in connection with the consummation of a refunding program approved and put into effect by the City Commission; and

Whereas, through the efforts of Exselsen in later negotiations, the signatory creditors have agreed to permit the City to retain the delinquent assets (valued in excess of $500,000) above described and have further expressly agreed "to waive any and all claims they might have to delinquent taxes and/or special assessments imposed prior to January 1, 1936, and/or tax certificates, tax deeds, or other assets now or hereafter derived therefrom" and the City, as one of the considerations for said agreement and waiver has entered into the express covenant set forth in the Eighth paragraph of the Creditor Agreement of December 24, 1936, which provides as follows:

"The City expressly agrees that no creditor joining in this agreement shall subject or obligate himself or itself to any cash or other assessment or contribution whatsoever in connection with this agreement, it being understood and agreed that all expenses incurred hereunder shall be paid by the City"; and

Whereas, at the time the retention of said delinquent assets by the City was so arranged, it was expressly understood and agreed by the City that said delinquent assets so retained by it should be and become subject to the same $40,000 charge thereon which would have been made available by the Creditors to Exselsen as part of his fee had the said delinquent assets been delivered to them; and

Whereas, said Exselsen has been called upon to perform a large amount of services outside the scope of his orig-

inal employment which was not anticipated or contemplated by either of the parties hereto; and

Whereas, both of the parties hereto are desirous of setting forth and/or merging into one final contract all previous writings and oral understandings between the parties concerning the amount of compensation and expenses to be paid said Exselsen for services already performed and to be performed in connection with the consummation of a debt refunding program acceptable to the City Commission, as well as the time when, and the terms under which, said compensation and expenses should become due and payable; and

Whereas, the said Exselsen, in view of the current heavy commitments of the City, has agreed to defer the payment of Thirty Thousand Dollars of the aggregate fees herein agreed to be paid to him, on the terms and in the manner hereinafter provided;

Now, Therefore, in consideration of the premises, the mutual covenants of the parties hereto and other good and valuable considerations, the following agreement is entered into by and between the parties hereto as follows, to-wit:

First: Expressly contingent upon the consummation of the provisions of the "Barker Committee" Contract of February 3, 1937, and the Creditor Contract of December 24, 1936, above referred to, or the consummation of any amendment to the Plan of Readjustment and Refunding therein referred to, or any substitute therefor approved by the Commission of the City of Coral Gables within one year from the date hereof, the City agrees to pay said Exselsen: (a) Forty Thousand Dollars which shall con-

stitute a direct, general and unlimited obligation of the City payable out of general City funds derived from any source; (b) an additional Forty Thousand Dollars payable solely out of the net cash proceeds realized subsequent to June 29th, 1937, from "delinquent tax assets of the City covering any and all claims representing delinquent taxes and/or special assessments imposed prior to January 1, 1936, and/or tax certificates, tax deeds or other assets now or hereafter derived therefrom", being the group of assets referred to in Section 12 of Ordinance No. 269; (c) reasonable and necessary expenses, to be accounted for and approved by the City Commission, in a sum not to exceed an aggregate of Twelve Thousand Dollars.

Second: The fees and expenses provided for in paragraph First above shall be liquidated as follows:—a payment on account of fees in the sum of Fifty Thousand Dollars, minus the Seventy-five Hundred Dollar cash advance made on or about April 15, 1937, plus any expenses up to $12,000 remaining unpaid after the cancellation of two notes of Exselsen dated December 1st, 1936, and January 30, 1937, respectively, shall become due and payable in cash, when, as and if:

(1st) The terms and provisions of the "Barker Committee" Contract of February 3, 1937, have been consummated by the physical exchange of new Refunding Bonds and Tax Participation Certificates, or other refunding securities, for the indebtedness represented by said Committee; and

(2nd) The terms and provisions of the Creditor Contract of December 24, 1936, have become operative under the terms of paragraph Seventh thereof which reads as follows:—"Seventh: This agreement shall become opera-

tive when proper signatures or consents thereto have been executed upon this document or counter parts thereof, and/or related documents, by "Creditors" having, in the opinion of the City Commission of the City of Coral Gables, a sufficient portion of all unpaid principal indebtedness of the City incurred prior to November 6, 1934, (but in no event less than 90% thereof) to insure that the City will be able to perform the covenants in the Refunding Bonds and to make the Plan for Readjustment and refunding incorporated herein feasible and practicable"—and the terms thereof have been consummated by the actual exchange of the new Refunding Bonds and Tax Participation Certificates, or other refunding securities or considerations, for the indebtedness of the Creditors signatory thereto. Also contingent upon the happening of the conditions precedent set forth in (1st) and (2nd) above, the remaining Thirty Thousand Dollars of the obligation for fees provided for in paragraph First above shall become due and payable as follows:

(a) Fifteen Thousand Dollars on or before March 2, 1938.

(b) Fifteen Thousand Dollars on or before January 2, 1939.

said payments to be evidenced by notes of The City of Coral Gables dated as of July 1st, 1937, (or such later date as may be mutually agreed upon), and bearing interest at the rate of 2½% per annum payable semi-annually. When and after $75,000 in cash has been realized subsequent to June 29, 1937, from the liquidation of the delinquent assets described in Section 12 of Ordinance No. 269, the City further agrees to apply monthly, in reduction of the above described notes, twenty (20%) per

cent of all funds thereafter realized from the liquidation of the above mentioned delinquent assets.

Third: In the absence of express written contract to the contrary, it is further understood and agreed that no additional charge is to be made by Exselsen to the City for any additional services heretofore rendered or to be rendered, or for further expenses incurred, particular mention being made of sevices: (a) rendered in the validation proceedings; (b) rendered in connection with any agreement which he has or may assist in negotiating and consummating for the liquidation of the "delinquent tax assets of the City covering any and all claims representing delinquent taxes and/or special assessments imposed prior to January 1, 1936, and/or Tax Certificates, Tax Deeds or other assets now or hereafter derived therefrom" described in Section 12 of Ordinance No. 269; (c) to be rendered by said Exselsen in a persistent and conscientious effort to negotiate special adjustments with those creditors who may not have consented to the Refunding Plan at the time the same is declared operative, it being understood that each of such special adjustments is to be dealt with specially by the City Commission after the same have been negotiated to a point where the greatest savings can be effected and the most favorable terms to the City developed.

Fourth: The said Exselsen hereby accepts, ratifies and confirms the terms and provisions herein set forth and agrees to make available to the City Commission, on reasonable notice, details as to any and all matters relating to his said employment.

In Witness Whereof, the City, pursuant to due authority, has caused this agreement to be executed in duplicate originals by its Mayor, attested by its City Clerk and Director of Finance, and its seal to be hereunto affixed,

and the said Exselsen has also affixed his name and seal, all of the date first above written.

THE CITY OF CORAL GABLES,
By PAUL D. McGARRY, Mayor.

Approved:
PAUL D. McGARRY,
W. KEITH PHILLIPS,
HOLLIS RINEHART, JR.,
N. F. AVERY,
Commissioners of the City of Coral Gables.

Approved as to substance and form:
MORTON B. ADAMS,
City Attorney.

1649 DEFENDANT'S EXHIBIT 2.

Filed March 4, 1941. F. M. Hudson, Master.

This Agreement made the third day of February, 1937, between The City of Coral Gables, Florida (hereinafter called the "City") and Edwin H. Barker, Prentiss de V. Ross and Sanders Shanks, Jr. (hereinafter called the "Committee") as and constituting the City of Coral Gables, Florida, Bondholders' Protective Committee organized and existing under that certain Deposit Agreement dated January 22, 1931, as amended:

Whereas, the City is indebted in the manner and amounts as more particularly appears from Ordinance No. 269 adopted by the City Commission the 23rd day of December, 1936, and the Committee by virtue of the aforesaid Deposit Agreement is authorized by the depositors of bonds thereunder to negotiate with the City for the pur-

pose of determining upon a plan for refinancing the City's outstanding indebtedness subject to the approval or rejection thereof by such depositors;

Now, Therefore, it is agreed between the City and the Committee that the bonds and interest claims deposited with the Committee will be readjusted and refunded in accordance with the terms and provisions set forth in Ordinance No. 269, entitled "An Ordinance authorizing a readjustment and refunding of the outstanding indebtedness of the City of Coral Gables by the issuance of refunding bonds and tax participation certificates", adopted by the City Commission on the 23rd day of December, 1936, upon the Committee obtaining from its depositors their approval of the terms and provisions of readjustment and refinancing embodied in said ordinance and this agreement, subject to the following conditions:

1. The readjustment and refunding provided for by said ordinance shall be consummated at such time as may be mutually agreed upon by the City and the Committee. Neither the City nor the Committee will be obligated to readjust or refund the bonds and interest claims deposited with the Committee unless and until each determines to its own satisfaction and in its own discretion that a sufficient amount of the outstanding indebtedness of the City is obligated to be readjusted and refunded under said ordinance in order to assure the success of the proposed readjustment and refunding. The Committee will notify the City of its desire to consummate the readjustment and refunding immediately upon its determination that the best interests of its depositors will be served by effecting an immediate readjustment and refunding of bonds and interest claims thereunder, and the City will notify the Committee of its desire to consummate the readjustment and refunding immediately upon its determination that

the best interests of its citizens and taxpayers will be served by effecting an immediate readjustment and refunding.

2. The Refunding Bonds and Tax Participation Certificates provided for by said ordinance shall first be validated by decree of the Circuit Court of the 11th Judicial Circuit of the State of Florida and said validating decree shall be affirmed by the Supreme Court of the State of Florida. Notwithstanding the provisions of Section 23 of said Ordinance, the validity of each and every covenant and provision contained in said ordinance shall be sustained by said validating decree and decision of said Supreme Court, unless otherwise agreed by the Committee. The form and contents of such validating decree and affirmance by the Supreme Court of the State of Florida shall be satisfactory to counsel for the Committee, and the validity and enforceability of such Refunding Bonds and Tax Participation Certificates shall first be approved by counsel for the Committee.

3. Prior to the delivery of said Refunding Bonds or Tax Participation Certificates no legislation will be enacted which, in the opinion of counsel for the Committee, would in any way impair or modify the obligation of the City on the Refunding Bonds and its undertakings with respect to the Tax Participation Certificates or the covenants contained in the ordinance authorizing their issuance.

Pending the preparation and exchange of the Refunding Bonds and Tax Participation Certificates authorized by said ordinance, the City will levy the taxes in the amounts and at the times required by such ordinances and comply therewith in all other respects in the same manner and to the same extent as if the outstanding indebtedness

were actually the Refunding Bonds and Tax Participation Certificates proposed to be exchanged therefor. Pending the preparation and exchange of the Refunding Bonds and Tax Participation Certificates authorized by the aforesaid ordinance, the City will pay to the Committee interest accruing from January 1, 1937, at the rates prescribed by the aforesaid ordinance for the Refunding Bonds authorized thereby on fifty per cent of the principal amount of outstanding indebtedness held by the Committee. Such payments of interest will be made on the interest payment dates provided by said ordinance for the Refunding Bonds, upon surrender of outstanding interest coupons evidencing the accrual of interest on the outstanding indebtedness dur ing the period of time covered by such interest payments or in the case of past due bonds having no interest coupons covering such period of time, upon presentation of such bonds for indorsement thereon of a notation of such payment. The Committee will accept payment made upon such basis in complete satisfaction and discharge of the interest coupons or claims thereby paid.

Upon delivery of the Refunding Bonds in exchange for the principal indebtedness to be refunded thereby, the interest coupons attached to said Refunding Bonds shall be adjusted to reflect any payments which may hereafter be made on account of interest accruing on 50% of the outstanding principal indebtedness held by the Committee during the period from January 1, 1937 to date of exchange, at the rates prescribed by the aforesaid Ordinance; provided, however, that if, at the time of exchange, said interest payments theretofore so made do not equal the amount evidenced by any past due coupons that may then be attached to said Refunding Bonds, the City agrees to pay the difference in cash so that all past due interest coupons may be detached and canceled.

Upon the delivery of any of the Refunding Bonds or Tax Participation Certificates in exchange for the outstanding indebtedness, the City will cancel all its outstanding bonds to be refunded hereunder which may be held by it in any sinking fund or in any capacity other than a trust capacity.

The City will pay all costs and expenses incurred by it incident to the issuance and validation of the Refunding Bonds and Tax Participation Certificates and in the event the City should default in any of the terms of the aforesaid ordinance which are to be operative pending the consummation of the readjustment and refunding or in the event the City should make payments to its creditors, other than the Committee, at rates or in amounts in excess of the payments contemplated by the terms of the aforesaid ordinance and this agreement to be made to the Committee, the Committee shall be at liberty to withdraw from this agreement.

This agreement shall not impose any individual or partnership liability upon any member of the Committee, it being intended that the covenants and agreements made herein by the members of the Committee are made solely in a representative capacity under the terms of the Deposit Agreement of January 22, 1931, and amendments thereto, and as such will be binding upon the successor or successors of the present members of the Committee and their survivors.

This agreement shall expire on the 1st day of August, 1937 unless extended in writing by the parties hereto for a longer period and nothing in this Agreement shall be construed to prevent either party hereto from preserving and enforcing any legal rights not inconsistent with the provisions of this Agreement or the aforesaid Ordinance.

In Witness Whereof the parties hereto have executed this Agreement the day and year first above written.

THE CITY OF CORAL GABLES, Florida,

By .....
Mayor.

Attest:

.....
City Clerk and Director of Finance.

CITY OF CORAL GABLES, FLORIDA BONDHOLDERS' PROTECTIVE COMMITTEE,

By .....
Chairman.

Attest:

.....
Committee Secretary.

1653 DEFENDANTS' EXHIBIT 3.

For Identification F. M. Hudson, Master.

Plan and Agreement for Readjustment and Refunding of Principal and Interest of Outstanding Bonded and Floating Indebtedness of The City of Coral Gables Florida.

Dated: December 24, 1936.

Plan for Readjustment and Refunding of Principal and Interest of Outstanding Bonded and Floating Indebtedness of The City of Coral Gables, Florida.

Section One.

Refunding Bond Issue.

The City of Coral Gables agrees to authorize and issue Refunding Bonds, to be validated by decree of the Circuit Court and affirmed by the Supreme Court of Florida, in an amount equal to fifty (50%) per cent of all unpaid principal indebtedness incurred prior to November 6, 1934, not to exceed, however, the total sum of Four Million Two Hundred Thousand ($4,200,000) Dollars, and agrees to distribute these Refunding Bonds, together with the tax Participation Certificates hereinafter provided for, pro rata among all the present creditors of the City in full satisfaction of the claims they now have against the City. Said Refunding Bonds shall constitute direct, general, and unlimited obligations of the City. The aggregate principal amount of these claims as of January 1, 1937 does not exceed approximately $8,400,000. The accrued interest thereon up to January 1, 1937 is approximately $2,842,220.

Each creditor shall receive Refunding Bonds in a principal amount equal to fifty (50%) per cent of the principal amount of the outstanding indebtedness held by such creditor, and in settlement of the difference between the total outstanding indebtedness, including unpaid interest accrued to January 1, 1937, so held by such ceditor, and the principal amount of Refunding Bonds to be so issued to him, such creditor shall receive Tax Participation Certificates on the basis hereinafter provided, evidencing the fact that indebtedness in an amount equal to such difference has been canceled and surrendered by him. Whereever any such bonded or other indebtedness has been or may hereafter be reduced to judgment, it shall be refunded hereunder in the same manner and upon the same basis as though it had not been reduced to judgment.

Section Two.

Maturity of Refunding Bonds.

All of said Refunding Bonds shall be dated January 1, 1937 and shall mature July 1, 1977, subject to redemption on any interest payment date prior to maturity upon payment of the par value thereof and accrued interest to the date fixed for redemption. In the event bonds are to be redeemed prior to maturity, except in respect to purchases and/or redemption of bonds that may be made under Section Ten of this Plan, the particular bonds to be redeemed shall be determined by lot and shall be redeemed only after notice of redemption, setting forth the numbers of the particular bonds to be redeemed and the date fixed for redemption, shall have been published in a financial newspaper published in the City of New York, N. Y., once a week for two consecutive calendar weeks, the date of the first publication of such notice to be at least thirty days prior to the date fixed for redemption.

All Refunding Bonds purchased or redeemed by the City under the terms hereof will be canceled immediately upon their surrender to the City.

Section Three.

Interest, Payment and Registration.

The Refunding Bonds shall bear interest as follows:

2½% per annum for the first 2½ years;

3% per annum for the next 6 years;

3½% per annum for the next 2 years;

4% per annum for the next 5 years;

4½% per annum for the next 10 years;

5% per annum for the next 15 years.

Interest upon said Refunding Bonds shall be payable semi-annually on January 1st and July 1st and shall be evidenced by interest coupons to be attached thereto.

Both principal and interest of said Refunding Bonds shall be payable in lawful money of the United States of America at the Central Hanover Bank & Trust Co., New York City, New York, upon presentation and surrender of said bonds and the interest coupons thereto attached as they severally mature.

Said Refunding Bonds shall contain provisions for their registration as to principal alone, and as to both principal and interest.

Section Four.

Special Covenants Relating to Future Taxation for Servicing Refunding Bonds.

While said Refunding Bonds, or any of them, remain outstanding, the City covenants that, for the payment of maturing interest thereon and the yearly sinking fund payments hereinafter set forth, it will annually levy taxes, in the manner hereinafter prescribed, in an amount sufficient to provide therefor upon all property within the present territorial limits of The City of Coral Gables excepting only such property as was exempted from municipal taxation by the Constitution of the State of Florida,

as it was in force and effect immediately prior to November 6, 1934.

The City further covenants that all property within its territorial limits subject to taxation hereunder will be assessed at the full true value thereof, and that, notwithstanding Section 7 Article X of the Constitution of the State of Florida, added thereto by Amendment ratified November 6, 1934, and any legislation enacted pursuant thereto, it will, while said Refunding Bonds or any of them remain outstanding, levy the taxes herein provided for upon all homesteads within the present territorial limits of the City to the same extent as other property in the City may be liable therefor.

The City further covenants that the rate of taxation to be levied annually for the purposes aforesaid shall be that rate which, after applying the experience of collectibility and delinquency for the taxes of the previous years, taking into account reduction or increase of valuations on property delinquent to the City the previous year, will produce the amount required for said purposes. All taxes not collected two months after the close of the fiscal year for which levied, shall be considered as delinquent for the purposes hereof.

The City further covenants and expressly agrees that the same rights of procedure open to property owners in appealing from assessments on property are hereby made available to any holder or holders of Refunding Bonds.

The City further covenants that all tax levies required to be made hereunder for the "Issue of January 1, 1937 Fund", hereinafter provided for and the tax levies that may be required to be made by Section Ten hereof, shall constitute special levies for the particular purposes for

which they are imposed and that such tax levies, while constituting special levies, will be collected in cash at the same time and in the same manner as other ad valorem taxes which may be levied by the City and upon collection will be immediately segregated and paid into such Funds as hereinafter provided. The City covenants that it will set aside daily out of the proceeds of its tax collections, including the monies derived from the sale or transfer of tax certificates and tax deeds in connection with taxes levied after July 1, 1936, the proportionate amount thereof applicable to the "Issue of January 1, 1937 Fund" and the Fund provided for by Section Ten hereof. All monies so paid into such Funds shall be forthwith deposited with a City Depositary and held by it in trust for the purposes hereinafter specified.

The City further covenants that it will not accept payment of any tax or part thereof hereafter levied against any parcel of property for operating or governing the City unless all taxes hereafter levied against the same parcel of property for the Issue of January 1, 1937 Fund and the Fund provided for by Section Ten hereof are paid at the same time and the City further covenants that the remedies for the enforcement of the indebtedness refunded hereunder shall appertain to said Refunding Bonds and the taxes securing the same independently of any restrictions or limitations thereon enacted or made effective since November 5, 1934.

The City covenants that so long as any of the Refunding Bonds or Tax Participation Certificates authorized hereby may be outstanding, it will not avail itself of the provisions of Chapter 16965, Laws of 1935, or any other legislation which may be hereafter enacted by the Legislature of the State of Florida in any way impairing or modifying the obligation of the City on such Refunding Bonds or any

undertakings in connection with Tax Participation Certificates authorized hereby or the covenants of the City contained herein.

Section Five.

Obligatory Minimum Tax Levies for "Issue of January 1, 1937 Fund".

The City covenants and agrees to annually levy and collect a separate and special tax at the rate of six mills for each of the fiscal years 1937-38 to 1941-42, inclusive; at the rate of seven mills for each of the fiscal years 1942-43 to 1946-47, inclusive; at the rate of seven and one half mills for each of the fiscal years 1947-48 to 1956-57, inclusive; and at the rate of eight mills for each of the fiscal years 1957-58 to 1976-77, inclusive. The City covenants that the proceeds of such tax levies, whether received before delinquency or after delinquency, or through the issuance of tax certificates or tax deeds, will be appropriated and will be paid immediately upon receipt into a special fund known as the "Issue of January 1, 1937 Fund" which the City covenants to establish and pledge for the sole and exclusive purposes herein set forth and that no obligations other than those expressly provided for under the provisions of this Plan shall ever be made a charge against such Fund.

The City further covenants that there will also be paid into said Issue of January 1, 1937 Fund so much of the proceeds of taxes levied for the fiscal year 1936-37 as may be equal to the amount of interest to accrue upon the Refunding Bonds from January 1, 1937 to July 1, 1937.

The City further agrees that if for any fiscal year the assessed valuation of property made subject to taxation

hereunder, multiplied by the rate of tax above prescribed for such fiscal year, should equal an amount less than 33-1/3% of the amount appropriated for such fiscal year for purposes other than the Issue of January 1, 1937 Fund, then the rate of tax above prescribed for such fiscal year will be increased to a rate, the application of which to such assessed valuation will equal not less than 33-1/3% of the amount appropriated for such other purposes; provided, however, that in no event will the above prescribed rates ever be reduced and provided, further, that in arriving at the amount of such total annual appropriations there shall be excluded any sums appropriated (a) for the payment of the extraordinary, non-recurring expenses incident to the present Readjustment and Refunding; (b) for repairs necessitated by hurricanes or other major catastrophes beyond the control of the City; (c) for capital improvements in connection with garbage or sewage disposal; and (d) for major paving repairs and parkway extensions, but as to said major paving repairs and parkway extensions, an amount not to exceed 12½% of the amount appropriated for purposes other than the Issue of January 1, 1937 Fund.

The City further agrees that in preparing its annual appropriation ordinance and tax levy ordinance for any fiscal year, it will include therein, as an appropriation for operating expenses, an amount equal to the estimated deficit to be incurred in the operation of all utilities and enterprises by the City during the fiscal year for which such appropriation and tax levy ordinances are prepared, which estimated deficit shall never be less than the actual deficit incurred in the operation of such utilities and enterprises during the preceding fiscal year. Anticipated collections of delinquent taxes will not be considered as revenue available for the Issue of January 1, 1937 Fund in preparing the appropriation ordinance of the City or in

fixing the tax levy for any fiscal year, but the City covenants that all monies received by it through the collection of delinquent taxes levied for such Fund will be paid into it immediately upon collection.

The City further covenants that it will actively and diligently enforce the collection of all taxes hereafter levied for the Issue of January 1, 1937 Fund and the Fund provided for by Section Ten hereof and that it will not accept anything but lawful money of the United States of America in payment or satisfaction of the Taxes required to be levied or pledged hereunder to such Funds. No reduction, compromise or adjustment will be made in the amount or time for payment of such taxes, but promptly following the legally allowable date the City will enforce the collection of such taxes as may become delinquent through tax sales and by strictly pursuing all remedies available to it for compelling the payment of such delinquent taxes and will complete the sale for the enforcement of taxes before the close of the fiscal year for which such taxes were levied. The net proceeds received through the sale of tax liens, tax certificates and tax deeds, after pro rating and deducting foreclosure and all other necessary collection costs and expenses, will be applied by the City to the purposes for which the taxes collected thereby were levied or are pledged hereunder.

Section Six.

Interest Payments and Sinking Fund.

The City covenants that the monies in said Issue of January 1, 1937 Fund provided for in Section Five will in the first instance and from time to time be applied to the payment of interest on the Refunding Bonds as that interest matures.

The City further covenants that when, at any time during the life of the Refunding Bonds, the monies in such Fund shall exceed the amount of such unpaid interest maturing during the then current fiscal year and the first semi-annual interest payment maturing in the next succeeding fiscal year, so much of such excess monies will be paid into a Sinking Fund for the Refunding Bonds that payments into said Sinking Fund will be made during the fiscal years set forth below and in the amounts set opposite thereto, to-wit:

$ 5,000 during the fiscal year 1945-46
10,000 during the fiscal year 1946-47
20,000 during the fiscal year 1947-48
25,000 during the fiscal year 1948-49
30,000 during the fiscal year 1949-50
30,000 during the fiscal year 1950-51
30,000 during the fiscal year 1951-52
40,000 during the fiscal year 1952-53
40,000 during the fiscal year 1953-54
40,000 during the fiscal year 1954-55
50,000 during the fiscal year 1955-56
55,000 during the fiscal year 1956-57
85,000 during the fiscal year 1957-58
90,000 during the fiscal year 1958-59
100,000 during the fiscal year 1959-60
110,000 during the fiscal year 1960-61
115,000 during the fiscal year 1961-62
130,000 during the fiscal year 1962-63
135,000 during the fiscal year 1963-64
140,000 during the fiscal year 1964-65
145,000 during the fiscal year 1965-66
150,000 during the fiscal year 1966-67
160,000 during the fiscal year 1967-68
170,000 during the fiscal year 1968-69
180,000 during the fiscal year 1969-70

190,000 during the fiscal year 1970-71
200,000 during the fiscal year 1971-72
210,000 during the fiscal year 1972-73
220,000 during the fiscal year 1973-74
230,000 during the fiscal year 1974-75
240,000 during the fiscal year 1975-76
250,000 during the fiscal year 1976-77

The City further covenants that the Sinking Fund payment to be made during the fiscal year 1976-77 will be increased by the amount, if any, by which the principal amount of Refunding Bonds then outstanding exceeds the amount of the Sinking Fund payment above required for such fiscal year.

Notwithstanding the rates of taxation provided to be levied by Section Five for the fiscal years 1937-38 to 1976-77, the City further covenants that as long as any Refunding Bonds may be outstanding the rates of taxation prescribed by Section Five will be increased, if necessary, in order to produce the sums required for the payment of interest on said Refunding Bonds and the Sinking Fund payments hereinabove provided to be made as the same respectively mature or become payable hereunder and in determining the rate of tax necessary to be levied in any fiscal year for said purposes, such rate of tax will be levied which, when applied (1) to the current assessed valuation of all real property against which the City held no tax lien on the preceding August 31st for taxes levied prior to the preceding fiscal year, and (2) to that percentage of the current assessed valuation of personal property which was found to be collectible in the next preceding fiscal year, will be sufficient to produce the sums so required; provided, however, that in no event will the rate of tax be lower than the minimum rates prescribed by Section Five. If in any fiscal year while

the Refunding Bonds are outstanding there should not be paid into the Sinking Fund for the Refunding Bonds the amount hereinabove required for such fiscal year, the City covenants that for the next succeeding fiscal year it will levy an additional tax over and above all other taxes required hereby, sufficient to produce in such fiscal year the amount of such deficiency. The additional taxes required to be levied for any fiscal year by this paragraph may be reduced by the amount of money derived from sources other than the proceeds of levies required to be made under the provisions of Section Five which is actually on hand and validly appropriated to the Issue of January 1, 1937 Fund at the time of making the tax levy for such fiscal year, but no reduction shall be made below the minimum rates prescribed by Section Five; provided, however, that the proceeds collected from the said extra millage which might be required to make up such a deficiency in the Sinking Fund shall be considered as an advance by the City against the collection of the delinquent Debt Service Taxes, the non-payment of which caused the necessity for the said extra millage, and as such delinquent taxes are collected they shall be repaid to the City in the amount of the proceeds of said extra millage actually paid into said Sinking Fund, to be held by the City in trust as a separate Emergency Sinking Fund, to be used for the purpose of reducing the amount of any such extra millage which might otherwise be required in the future to make up such a deficiency in the Sinking Fund, and all delinquent tax collections resulting from said extra millage, made after supplying such deficiency in the Sinking Fund, shall be paid into said Emergency Sinking Fund for future use for said purpose, but in no event shall the tax rates required in Section Five be reduced.

The City further covenants that interest maturing July 1 of any fiscal year will be levied for and included in the taxes imposed for the fiscal year immediately preceding.

The City further covenants that the proceeds of all taxes required to be levied by this Section received before delinquency, and the net proceeds collected after delinquency, or through the issuance of tax certificates or tax deeds, after deducting their proportionate share of foreclosure and other necessary collection costs, will be paid immediately upon receipt into the Issue of January 1, 1937 Fund, provided for in Section Five, and thereafter applied as other monies in said Fund are directed to be applied. Upon the retirement of all of said Refunding Bonds, or the call thereof and setting aside of sufficient monies to redeem the same, no further Sinking Fund payments shall be made out of said Issue of January 1, 1937 Fund and the obligation of the City to levy additional taxes under this Section shall cease, but the City covenants that it will continue to levy the minmum taxes prescribed by Section Five for the years set forth therein; provided, however, that if the City should at any time retire all of said Refunding Bonds then outstanding, through a new refunding or refinancing issue bearing interest at a rate lower than that borne by the Refunding Bonds herein authorized, the City shall be entitled to reduce the annual payments herein provided to be made into said issue of January 1, 1937 Fund to the extent of the annual interest and Sinking Fund payments prescribed by this section for the Refunding Bonds so retired, but in no event shall the aggregate reductions in the annual payments into said Issue of January 1, 1937 Fund exceed the principal amount of Refunding Bonds so retired and the interest that would have been paid thereon at the rates prescribed herein if they had been retired in the amounts and at the times contemplated by the schedule of Sinking Fund payments hereinbefore prescribed; and provided, further, that if

at any time prior to the fiscal year 1976-77 all of said Refunding Bonds shall have been retired and there shall have been ear-marked for payment or paid on account of such Tax Participation Certificates an amount equal to the full amount of the indebtedness surrendered therefor, the obligation of the City to levy the foregoing fixed debt service annual tax millages shall cease and terminate and any surplus funds and delinquent taxes over and above the amounts required to complete said payments in the Issue of January 1, 1937 Fund, the Emergency Sinking Fund or any other funds raised from levies made under the provisions hereof, shall be released to the City and become available for expenditure for any lawful municipal purposes.

The City further covenants that the monies in the Sinking Fund will be applied solely to the retirement of the principal of Refunding Bonds by purchase, call, or payment, in the manner provided for in Section Seven and that any surplus monies remaining in said Sinking Fund upon retirement of all Refunding Bonds will be repaid to the Issue of January 1, 1937 Fund.

Section Seven.

Tenders and Retirement by Lot.

The City may apply any monies in the Sinking Fund hereinabove provided for said Refunding Bonds to the purchase of Refunding Bonds at the lowest prices submitted, provided that such prices shall be less than the par value and accrued interest on the Refunding Bonds to be so purchased. The City covenants that in the event there is in the Sinking Fund hereinabove provided for the Refunding Bonds the sum of $20,000 or more it will apply the monies in such Sinking Fund to the purchase of Refund-

ing Bonds at the prices and subject to the conditions herein. Any such purchases of Refunding Bonds with Sinking Fund monies will be made by calling for and accepting tenders. Thirty days prior to the receipt of tenders the City will cause to be published in a financial paper published in the City of New York, N. Y., a notice requesting tenders of Refunding Bonds and fixing the time and place at which such tenders will be received. All tenders will be required to be contained in plain sealed envelopes marked "Tender of City of Coral Gables Refunding Bonds", and will be opened in public on the day and at the place fixed in the notice calling for such tenders. Except in the case of calls for tenders which may be required to be made by reason of the existence of $20,000 or more in the Sinking Fund for Refunding Bonds, the City shall have the right to reject any and all tenders in excess of a fixed price to be determined by it. Subject to the exercise of this right all monies on hand in the Sinking Fund on the date fixed for the receipt of such tenders will be applied immediately to the purchase of Refunding Bonds tendered at the lowest prices. If tenders of a greater amount of Refunding Bonds at the same price are received, than monies are available in the Sinking Fund for the purchase thereof, the City will purchase the Refunding Bonds tendered at such price in the order in which the tenders were received, provided, however, that the City shall have first purchased all other Refunding Bonds, which may have been tendered at a lower price, if any. In the event there shall be insufficient monies in the Sinking Fund to purchase all of the Refunding Bonds offered by any tender otherwise acceptable, the City may accept any part of the Refunding Bonds so tendered. The City, at its option may require all tenders of Refunding Bonds to be accompanied by a certified check of not exceeding one per cent of the amount of Refunding Bonds so tendered to evidence the good faith of the tender.

In the event monies in the Sinking Fund shall accumulate to the amount of $20,000 or more and remain on hand for more than six months, notwithstanding the fact that the City has made all calls for tenders of Refunding Bonds as required herein, the City covenants that such monies will be applied to the redemption of Refunding Bonds to be selected by lot in an amount sufficient to exhaust such monies upon the first interest payment date thereafter occurring, provided that if such interest payment date should occur within a period of time less than that for which notice of redemption must be given, plus 15 days, said monies will be set aside to be applied solely to the redemption of Refunding Bonds upon the next succeeding interest payment date. Any and all redemptions that may be made, as required by this paragraph will be made in accordance with the terms and provisions set forth in the Refunding Bonds, and in the ordinance authorizing said Refunding Bonds, whereby the City reserves the right to redeem said Refunding Bonds prior to their maturity.

All Refunding Bonds so purchased or redeemed by the City shall be canceled immediately upon their surrender to the City. The City covenants that it will not purchase any Refunding Bonds if and while it may be in default in the payment of interest on any Refunding Bonds unless tenders thereof shall have been accepted prior to such default, and then it may purchase only the bonds covered by such tenders.

Section Eight.

Tax Participation Certificate Fund.

Annually on the last day of each of the fiscal years 1937-38 to 1976-77, inclusive, all monies derived from the levy

of tax rates prescribed in Section Five hereof, if any, remaining in said Issue of January 1, 1937 Fund after paying interest maturing on the Refunding Bonds in such fiscal year and the Sinking Fund payment required to be made hereunder for such fiscal year, and after reserving in said Issue of January 1, 1937 Fund an amount equal to the first semi-annual interest payment maturing on said Refunding Bonds in the next succeeding fiscal year, shall be forthwith paid into a "Tax Participation Certificate Fund" which the City hereby covenants to constitute and establish. Said Tax Participation Certificate Fund will be held and administered by the City as trustee for the sole use and benefit of the registered holders of Tax Participation Certificates issued against such Fund.

The City further covenants that it will issue Tax Participation Certificates in full satisfaction of that portion of its entire debts constituting the difference between the aggregate indebtedness of the City to be readjusted and refunded under this refunding plan (including unpaid interest thereon accrued to the date of the Refunding Bonds) and the principal amount of all Refunding Bonds, not to exceed the sum of $4,200,000. One Tax Participation Certificate shall be issued in exchange for each Five Hundred ($500.00) Dollars of indebtedness surrendered and representing the difference between the aggregate indebtedness and the principal amount of the Refunding Bonds authorized to be delivered hereunder. For any part of such indebtedness which may be less than Five Hundred ($500.00) Dollars, a fraction of a Tax Participation Certificate equal to the percentage that such indebtedness bears to Five Hundred ($500.00) Dollars shall be issued. Each creditor of the City shall be entitled to receive a number of Tax Participation Certificates which, on the basis of Five Hundred ($500.00) Dollars per certificate, will be equal to the difference between the amount of the

indebtedness held by him, including unpaid interest accrued thereon to January 1, 1937, and the principal amount of Refunding Bonds to which he may be entitled hereunder upon surrender and cancellation of the indebtedness so held by him.

The extent of the participation in such fund of any holder of such Certificate shall be measured by the ratio that the amount of indebtedness exchanged for the Certificates held by said holder bears to the total amount of indebtedness surrendered for all Tax Participation Certificates issued and outstanding hereunder. Such Tax Participation Certificates shall be entitled to payment solely out of the Tax Participation Certificate Fund if and when monies may accumulate therein and shall not constitute, either directly or indirectly, or be construed to be an indebtedness of the City, but shall merely evidence the right of the holder to participate annually on a pro rata basis in the years 1938 to 1977 inclusive in the monies, if any, herein required to be paid into the Tax Participation Certificate Fund. Said Certificates shall bear no interest and shall have no definite maturity date.

On August 1st of each year, beginning in the year 1938, the City covenants that it will apportion and make pro rata disbursement of all funds on hand on the preceding July 1st in said Tax Participation Certificate Fund among all the holders of the outstanding Tax Participation Certificates registered on each said July 1st as owners on the register of the Tax Participation Certificates kept by the City Clerk, as registrar, and remit such funds to them in New York Exchange by mail. Each disbursement to be so made shall be accompanied by a statement setting forth the total amount of the monies being disbursed, the total amount of the indebtedness for which outstanding Tax Participation Certificates have been issued, and the amount

being disbursed on account of each of the Tax Participation Certificates registered in the name of the holder to whom such disbursement is remitted. In the year 1977 such disbursement shall be made on December 31st of all monies in said Tax Participation Certificate Fund as of December 15th to the registered holders of record December 15th. Upon there being paid on account of such Tax Participation Certificates the full amount of the indebtedness surrendered therefor, they shall be surrendered to the City and canceled by it, provided, however, that in any event all such Certificates shall be surrendered to the City and canceled by it upon the 1977 and prior annual payments, if any, being made thereon, regardless of the total amount paid thereon and thereupon the City shall have no further duties with respect to any such Certificates.

Tax Participation Certificates shall be issued in registered form, transferable only upon the books of the City Clerk of The City of Coral Gables, as Registrar, and shall be executed with the facsimile signature of the Mayor under the corporate seal of the City, attested manually by the City Clerk. They shall be dated as of January 1, 1937.

Said Certificates may be transferred from time to time by the holder thereof, or his personal representative, by assignment duly registered and noted in the registration blank on said Certificate. The transfer shall be registered in a book kept for that purpose by the City Clerk of The City of Coral Gables, as Registrar, and no holder thereof, or party interested therein, shall be entitled to recognition as such by the City for any purpose unless the same be so registered, but said register shall be conclusive as to such ownership; and the City shall be authorized to treat the person in whose name any such Certificate may be registered on the books of the City Clerk of The City of Coral Gables, as Registrar, as the owner thereof for all purposes.

Any transferee of said Certificates shall take the same subject to any and all payments that may theretofore have been made thereon and subject to all the terms and provisions of the Ordinance authorizing the issuance thereof, and shall acquire only the rights and interests of the transferor as such rights and interests are more particularly prescribed by Ordinance No. 269 of the City of Coral Gables.

Any notice to be sent to any Certificate holder shall be mailed postage prepaid addressed to such certificate holder at the address shown on the Register of the Tax Participation Certificates kept by the City Clerk, as Registrar, and the mailing of such notice shall be sufficient and conclusive evidence of actual notice to the certificate holders. Any monies, checks, remittances or other things at any time to be distributed or forwarded to any certificate holder may, in like manner and at the risk of the certificate holder, be mailed to such certificate holder at such address.

The City covenants that it will keep accurate records showing the total amount and rate of taxes levied in each of the fiscal years 1937-38 to 1976-77 and the amount and rate of tax levies made pursuant to the provisions of Section Five hereof, and the manner in which such amount and rate was determined. The City further covenants to maintain said records in such manner as to show the proceeds of all tax collections made during such fiscal years and the manner in which such proceeds have been accounted for, as well as an accurate record of any and all payments and disbursements made into and out of the Issue of January 1, 1937 Fund, the Sinking Fund, and the Tax Participation Certificate Fund. Any registered holder of Tax Participation Certificates will be entitled to examine and inspect such books and records of the

City and at his own expense to have an audit thereof made from time to time during the regular business hours for which the City's offices and departments are open.

Section Nine.

Circumstances Under Which City May Acquire Refunding Bonds and Tax Participation Certificates for Its Own Account.

The City may acquire for its own account with any monies other than monies in the Issue of January 1, 1937 Fund, the Sinking Fund the Tax Participation Certificate Fund, or the $500,000 Fund provided for by Section Ten hereof, or required to be paid into such funds hereunder, Refunding Bonds or Tax Participation Certificates authorized hereby and upon so acquiring such bonds or certificates, may hold the same for its own use and benefit. Any Refunding Bonds that may be so acquired by the City shall not be eligible for purchase by it pursuant to calls for tenders required to be made hereunder, but such Refunding Bonds shall be included with all other outstanding Refunding Bonds in the event the City is required hereunder to call bonds for redemption. In all respects other than the tender of bonds for purchase, Refunding Bonds and Tax Participation Certificates so acquired by the City shall be entitled to the same rights and privileges and subject to the same terms and conditions as outstanding bonds and certificates held by others, and the monies, if any, received by the City on account of such bonds and certificates, may be used by the City for any valid municipal purpose. Nothing in this section shall be deemed to permit the City to acquire bonds or certificates for its own account out of any monies in the Issue of January 1, 1937 Fund, the Sinking Fund, the Tax Participation Certi-

ficate Fund or the $500,000 Fund provided for by Section Ten hereof or required hereby to be paid into such funds.

Section Ten.

Purchase and Retirement of Bonds with Certain Proceeds Realized from Back Tax Claims.

The creditors of the City agree to waive any and all claims they might have to delinquent taxes and/or special assessments imposed prior to January 1, 1936 and/or to tax certificates, tax deeds or other assets now or hereafter derived therefrom. In consideration of said waiver and other good and valuable considerations, the City covenants, on or before the respective dates hereinafter set forth, to apply to the purchase and/or acquirement of Refunding Bonds at less than their par value with accrued interest, either in the open market at the lowest price obtainable or in any other manner approved by the City Commission, the following cash sums or their equivalent arising out of the liquidation of said delinquent tax claims or otherwise:

$45,000	on	or	before	July	1st, 1938
48,000	on	or	before	July	1st, 1939
51,000	on	or	before	July	1st, 1940
51,000	on	or	before	July	1st, 1941
51,000	on	or	before	July	1st, 1942
51,000	on	or	before	July	1st, 1943
54,000	on	or	before	July	1st, 1944
54,000	on	or	before	July	1st, 1945
48,000	on	or	before	July	1st, 1946
47,000	on	or	before	July	1st, 1947

In the event the City, on or before July 1st, in any of said years, shall fail to realize and/or apply said respective

sums or their equivalent to and for the purchase and/or acquirement of Refunding Bonds, as aforesaid, the City hereby covenants and agrees that it will levy a further and additional tax based on the assessment roll for the year in which said default occurs at a millage sufficient to produce the sum required for that year, and apply the proceeds from said levy to the purchase of Refunding bonds in the manner above provided on or before July 1st of the following year.

The City hereby covenants and agrees that, during the period beginning January 1, 1938 and ending July 1, 1947, it will apply yearly a sum (inclusive of the yearly sums above set forth) equal to not less than sixty (60%) per cent of all net cash proceeds which may be realized from the liquidation of said delinquent taxes and/or other assets above described to the purchase of Refunding Bonds at less than their par value with accrued interest, either in the open market at the lowest price obtainable or in any other manner approved by the City Commission, until an aggregate sum equal to Five Hundred Thousand ($500,000) Dollars, or its equivalent, realized from this source or procured from any other source, has been utilized under the terms of this Section Ten. Whereupon, any and all further obligation to apply said net proceeds shall cease and determine. The City shall be under no obligation to apply to the purchase of Refunding Bonds any net proceeds in any manner realized from the liquidation of the above described delinquent taxes and other assets during the calendar year 1937. In the event the City shall be unable to purchase Refunding Bonds at less than their par value with accrued interest in the manner above provided, it will apply the funds above referred to to the retirement of Refunding Bonds by lot in accordance with the redemption provisions applicable to said Refunding Bonds.

All Refunding Bonds so purchased or redeemed by the City under the terms of this Section Ten shall be promptly canceled.

Section Eleven.

Formal Legal Approvals to Be Secured by City.

The City agrees to promptly call a special election for the purpose of submitting to the qualified electors who are Freeholders of said City a proposition for the issuance of the Refunding Bonds and Tax Participation Certificates provided for herein and no Refunding Bonds or Tax Participation Certificates shall be issued hereunder until the proposition for the issuance thereof shall have been approved by a majority of the votes cast at such election, in which election a majority of the Freeholders who are qualified electors residing in the City shall have participated.

When and if the issuance thereof shall have been approved at such election, the City agrees, prior to the delivery thereof and at its own expense, to take all proper steps necessary to duly and regularly validate said Refunding Bonds and Tax Participation Certificates by final judgment of the Circuit Court affirmed by a decision of the Supreme Court of Florida.

Memorandum of Agreement.

This Agreement made and entered into as of the 24th day of December, A. D. 1936 by and between The City of Coral Gables, a municipal corporation created and existing under the laws of the State of Florida, hereinafter sometimes called the "City", and the several persons, firms and corporations, being the holders and/or

owners of bonded and other indebtedness of The City of Coral Gables incurred prior to November 6, 1934, whose names are subscribed to this agreement, hereinafter referred to as the "Creditors";

Witnesseth:

Whereas, the City has heretofore issued its bond and obligations dated, bearing interest, and originally issued in approximately the following amounts, to-wit:

Amount of Original Issue	Title of Issue	Dated	Interest Rate
$ 550,000	Permanent Improvement	Dec. 1, 1925	5½%
450,000	Permanent Improvement	Apr. 1, 1926	5½%
1,787,000	Improvement	July 1, 1926	6%
4,532,000	Municipal Improvement	Jan. 1, 1927	6%
157,000	Refunding	June 1, 1928	6%
873,000	Refunding	June 15, 1928	6%
157,000	Refunding	June 1, 1929	6%
195,000	Revenue	July 1, 1929	6%
96,000	Refunding	Jan. 1, 1930	6%
150,000	Refunding	July 1, 1930	6%

of which indebtedness there is now issued and outstanding a bonded indebtedness in the principal sum of approximately $7,977,000, upon which unpaid interest accrued to January 1, 1937 will amount to approximately $2,707,902; and

Whereas, prior to November 6, 1934 The City of Coral Gables duly incurred and now has outstanding other valid municipal indebtedness in the approximate principal amount of $412,000 upon which unpaid interest accrued to January 1, 1937 will amount to approximately $134,318; and

Whereas, a considerable part of such indebtedness has matured and the balance thereof and additional accruals of interest thereon will mature in such amounts and at such times as to impose upon the City too great a burden for it to meet; and

Whereas, it is in the interests of the City and its Creditors that such indebtedness be readjusted and refunded; and whereas, the City deems it advisable and necessary to readjust and refund said entire indebtedness and interest accruing thereon by issuing in exchange therefor: (a) Refunding Bonds in an amount equal to fifty (50%) per cent of all unpaid principal indebtedness incurred prior to November 6, 1934, not to exceed, however, the total sum of Four Million Two Hundred Thousand ($4,200,000) Dollars, and (b) Tax Participation Certificates in settlement of the difference between said total outstanding indebtedness, including unpaid interest accrued to January 1, 1937, and the principal amount of Refunding Bonds to be so issued, all in the manner and under the terms and conditions set forth in detail in the "Plan for Readjustment and Refunding of Principal and Interest of Outstanding Bonded and Floating Indebtedness of The City of Coral Gables, Florida", attached hereto and by express reference made a part hereof; and

Whereas, all of such outstanding indebtedness was incurred prior to November 6, 1934 and the holders thereof, by virtue of the laws in existence at the time of incurring such indebtedness, have the legal right to require that taxes for the payment thereof be levied on all property subject to taxation at the time such indebtedness was incurred, including homesteads exempted from taxation by the amendment ratified November 6, 1934 adding Section 7 to Article X of the Constitution of Florida, and to require the collection of such taxes in cash at the same time and

in the same manner as other taxes levied by the City; and

Whereas, a considerable number of such Creditors are willing to have the indebtedness owing them readjusted and refunded on the basis and under the terms and conditions set forth in said attached Plan;

Now, Therefore, in consideration of the premises and of the undertaking and performance of the covenants herein contained, and other good and valuable considerations, the parties to this Agreement hereby covenant and agree with each other as follows, to-wit:

First: Both The City of Coral Gables and the Creditors covenant and agree that the "Plan for Readjustment and Refunding of the Principal and Interest of the Oustanding Bonded and Floating Indebtedness of The City of Coral Gables, Florida", attached hereto and by express reference made a part hereof, is hereby accepted, adopted and approved and shall be taken to be a part of this Agreement with the same effect as if each and every statement and provision thereof had been embodied herein, and that said Plan and this Agreement shall be read as one and the same instrument. The City of Coral Gables Ordinance No. 269 authorizing said Plan for Readjustment and Refunding is also by express reference made a part hereof and each and every party signatory hereto expressly covenants and agrees to be bound by each and all of the terms thereof.

Second: The City covenants and agrees to issue Refunding Bonds in an amount equal to fifty (50%) per cent of all unpaid principal indebtedness incurred prior to November 6, 1934, not to exceed, however, the total sum of Four Million Two Hundred Thousand ($4,200,000) Dol-

lars, and further covenants and agrees that it will issue Tax Participation Certificates in satisfaction of that portion of its entire debts constituting the difference between the aggregate indebtedness of the City to be readjusted and refunded under this Refunding Plan, including unpaid interest thereon to January 1, 1937, and the principal amount of all Refunding Bonds, and agrees to issue and deliver one Tax Participation Certificate in exchange for each Five Hundred ($500.00) Dollars of indebtedness surrendered and representing the difference between the aggregate indebtedness and the principal amount of the Refunding Bonds provided to be issued hereunder.

The Refunding Bonds and Tax Participation Certificates to be issued hereunder shall be duly and regularly validated, at the expense of the City and prior to the delivery thereof, by final judgment of the Circuit Court affirmed by a decision of the Supreme Court of Florida. The Refunding Bonds shall be direct, general and unlimited obligations of the City payable out of unlimited ad valorem taxes upon all the real and personal property of the City subject to taxation, including homesteads. The Tax Participation Certificates, however, shall not constitute either directly or indirectly, or be construed to be, an indebtedness of the City, but shall merely evidence the right of the holder to participate yearly on a pro rata basis in all funds hereunder provided to be paid into the Tax Participation Certificate Fund.

Third: The City hereby designates the Central Hanover Bank & Trust Co., 60 Broadway, New York City, as Depositary for all bonds, coupons and other creditor indebtedness not deposited under the terms of the Deposit Agreement with the Bondholders' Protective Committee composed of Edwin H. Barker, Prentiss de V. Ross and Sanders Shanks, Jr. When and if the City shall certify to said

Central Hanover Bank & Trust Co., as Depositary, that the holders of ninety (90%) per cent of all unpaid principal indebtedness of the City incurred prior to November 6, 1934 have executed this document or counterparts thereof and/or related documents, each Creditor, signatory hereto, upon written request and at the expense of the City, covenants and agrees to promptly deposit all his or its bonds, coupons, obligations, notes, judgments, contracts or other evidences of indebtedness under the terms hereof with the Central Hanover Bank & Trust Co., as Depositary, and to accompany said bonds or obligations with written authority directing said Depositary, upon the affirmance by the Supreme Court of Florida of the judgment of the Circuit Court in the Refunding Bond validation proceeding herein provided for, to promptly surrender and deliver, or cause to be surrendered and delivered, to the City or an agent designated by the City, for cancellation, the bonds and coupons thereto appertaining, and/or other notes, judgments, contracts or other evidences of indebtedness so deposited as aforesaid, in exchange for Refunding Bonds and Tax Participation Certificates respectively due each signatory Creditor under the terms hereof, all in accordance with the terms and provisions and subject to the conditions precedent set forth in this Agreement, and the City agrees to issue and deliver to the Depositary for the account of each Creditor the amount of such Refunding Bonds and Tax Participation Certificates for delivery contemporaneously with aforesaid surrender of securities and in exchange therefor and in consideration thereof.

Any Creditor, signatory hereto, may, if he so elects, deposit his bonds, obligations, notes, judgments, contracts or other evidences of indebtedness with the Depositary prior to the date of the written request by the City for the deposit thereof provided for in the preceding paragraph.

All bonds and obligations shall be deposited in negotiable form accompanied by all unpaid coupons, whether or not matured, and with all assignments or other instruments, as may be required by the City. The Depositary, on request of the City, may admit to deposit bonds and obligations without coupons, or coupons without bonds and obligations, or in such other way as the City Commission of the City of Coral Gables may by resolution determine and direct. Creditors of the City, other than the holders of bonds and coupons, shall deposit the evidence or evidences of such indebtedness with proper instruments authorizing release, cancellation or assignment thereof to the City or in such other manner as the City Commission of The City of Coral Gables may by resolution determine and direct. For each such deposit a Certificate of Deposit executed by or on behalf of the Depositary shall be issued to the depositor. Neither the issuance of any Certificate of Deposit nor the acceptance by any depositor or any transferee thereof shall constitute any representation by the Depositary or by or on behalf of the City as to the title of the depositor to the bonds and obligations or coupons described in the Certificate of Deposit. Said Certificate of Deposit shall be in such form as may be approved by the Commission of The City of Coral Gables. Each Certificate of Deposit shall show the date of the bonds and obligations described therein, the issue or issues of which it or they are a part, and what coupons were deposited with the bonds, as well as sufficient data to fully identify all other obligations, notes, contracts or evidences of indebtedness deposited with the Depositary.

It is understood that a period of time, the extent of which cannot be foreseen at the time of the execution of this Agreement, must elapse before the necessary validation proceedings can be completed, the other conditions mentioned in this instrument satisfied, and before the Re-

funding Bonds and Tax Participation Certificates can be authorized, executed and exchanged. If, however, said period shall extend beyond June 30, 1937, any depositing Creditor may, without cost, withdraw the bonds, coupons and other evidences of indebtedness which he may have deposited with the Depositary under the terms hereof, and as to said withdrawing Creditor this Agreement shall thereupon become null and void and of no further effect.

Fourth: The City covenants and agrees, before issuing any Refund-Bonds and/or Tax Participation Certificates hereunder, to enact such Ordinances, and pass such Resolutions as may be legally required to make the covenants of the City herein contained a part of the contract of said City with the holders of Refunding Bonds and Tax Participation Certificates provided to be issued hereunder. All Ordinances, Resolutions and other acts or proceedings of the City Commission, or of any officer of the City, required by the terms of this Agreement; the proceedings incident to calling of a special election of the Freeholders of The City of Coral Gables to approve and authorize, or disapprove, the provisions of the Plan for Readjustment and Refunding; the proceedings to issue and validate the Refunding Bonds and/or Tax Participation Certificates herein provided for; the form, validity and effect of said Refunding Bonds and/or Tax Participation Certificates, and of the provisions for the Obligatory Minimum Tax Levies for Debt Service specifically provided for in Section Four and Section Five of the Plan for Readjustment and Refunding shall be subject to the approval of Thomson, Wood & Hoffman, of New York City, New York, or other competent municipal counsel. The City further agrees to furnish a legal opinion of said Thomson, Wood & Hoffman, or other competent municipal counsel, approving the legality of said Refunding Bonds and Tax Participation Certificates provided to be issued hereunder.

Fifth: The City covenants that the payment of the Refunding Bonds and the interest thereon shall not be hampered, delayed or voided by either Constitutional or Statutory enactments heretofore or hereafter adopted and that, so far as the same can or may relate to said Refunding Bonds, the remedies existent when the bonds and other indebtedness now outstanding were issued or incurred shall not be rendered less efficacious. The City further covenants that it will neither adopt nor put into effect any scheme or device of administrative procedure, whether directly designed or intended or not, which in operation will have the effect of hindering or delaying or unduly burdening holders of the Refunding Bonds hereafter to be issued in the realization of their right to payment of either interest or principal of said Refunding Bonds.

Sixth: Each of the Creditors, signatory hereto, agrees that he or it will not, pending the execution and performance of this Agreement: (a) sell, pledge or otherwise dispose of any of the bonds, coupons or other evidences of indebtedness covered by the provisions of this Agreement, except on such terms as the transferee or pledgee thereof will be bound by all the terms and conditions referred to herein, and that in the event of any such sale, pledge or other disposition, he or it will give written notice thereof to the City Clerk of The City of Coral Gables: (b) institute any action, suit or proceeding at law or in equity against The City of Coral Gables in relation to or based upon any deposit hereunder without the written consent of the Mayor or City Clerk of the City and that any pending litigation on behalf of any signatory hereto against The City of Coral Gables shall remain in statu quo and be continued by appropriate stipulations during the life of this Agreement.

Each and every Creditor, signatory hereto, further agrees to do and perform, or cause to be done and performed, each and every act, deed and thing whatsoever which the City or its attorneys shall deem necessary and proper to fully carry out the objects and intent of this agreement.

It is specifically agreed that no estimate, statement, explanation or suggestion made or contained in any oral or written explanation or in any circular or letter which may be issued in connection herewith is intended or is to be taken as a representation or warranty or as a condition of assent under the Plan and this Agreement and no defect or error therein shall release any assent hereto.

Seventh: This agreement shall become operative when proper signatures or consents thereto have been executed upon this document or counterparts thereof, and/or related documents, by "Creditors" having, in the opinion of the City Commission of The City of Coral Gables, a sufficient portion of all unpaid principal indebtedness of the City incurred prior to November 6, 1934 (but in no event less than 90% thereof) to insure that the City will be able to perform the covenants in the Refunding Bonds and to make the Plan for Readjustment and Refunding incorporated herein feasible and practicable.

Eighth: The City expressly agrees that no creditor joining in this Agreement shall subject or obligate himself or itself to any cash or other assessment or contribution whatsoever in connection with this Agreement, it being understood and agreed that all expenses incurred hereunder shall be paid by the City.

Ninth: All parties hereto agree to be bound by the terms of any amendment to this Agreement agreed to by the City and by two-thirds in amount of all claims of the

Creditors signatory hereto; provided, however, that no such amendment shall change the Obligatory Minimum Tax Levies, the Sinking Fund provisions or the basis of readjustment and exchange as provided for in the attached Plan.

Tenth: This Agreement shall be governed by the laws of the State of Florida irrespective of where any party may execute it or where this Agreement is to be performed in whole or in part (except that in the case or the interpretation of this agreement by a Court of another State than Florida, the laws of the State of Florida as applicable to this Agreement are to be adopted as fully as is permitted by the law of the State of the Court so interpreting).

Eleventh: This Agreement shall respectively bind and inure to the benefit of all parties hereto, their heirs, legal representatives, successors and assigns.

In Witness Whereof, the parties hereto have executed this Agreement in counterpart originals and affixed their respective seals hereto as of the date first above written.

THE CITY OF CORAL GABLES,
By ROSCOE BRUNSTETTER,
Mayor.
ROSCOE BRUNSTETTER,
PAUL D. McGARRY,
MARTIN F. AVERY,
M. B. GARRIS,
HOLLIS RINEHART, JR.,
Members of City Commission.

(City Seal)

Attest:
G. N. SHAW,
City Clerk & Director of Finance.

Creditor .....(Seal)

Street .....

City ..... State .....

Description of Deposited Bonds or Other Indebtedness.

Principal Amount ..... Date .....
Numbers ..... Coupons Appurtenant .....

LET'S BE FAIR AND STICK TO THE ACTUAL FACTS

REAL FACTS ABOUT DELINQUENT TAX ASSETS AND THEIR SALE

1 Every bond settlement proposed either by the Bondholders or the City during the six years of negotiation prior to the employment of Exerbon provided that all delinquent tax assets of the City should be delivered to the City's creditors.

2 In Resolution No. 1808 adopted October 1, 1936, appointing Exerbon exclusive representative of the City (jointly with the Commission) to negotiate a debt refunding plan, it was again expressly resolved that the City make available to its creditors all existing delinquent tax assets.

3 However, Exerbon did NOT turn these assets over to the creditors. Instead he secured from the Bondholders an express release waiving all claims to these assets and thereby, for the first time, made available to the City, AS FREE ASSETS, all proceeds which could be realized from the liquidation of these delinquent tax assets either through redemption or sale. All of these delinquent certificates were on vacant property. On the basis of the adjustment currently offered by the City at that time, the maximum which could have been realized, even if every single lot owner had paid up in full, would not have exceeded $600,000.

4 After months of negotiation, Exerbon secured for the City an offer from Henry L. Doherty & Company, through its subsidiary Coral Gables Development Company, to purchase all of these delinquent tax assets in one group for $575,000 in cash. This offer, popularly known as the "XYZ Contract" provided, among other things, that the City should continue to hold all tax certificates in trust and that there be made available to every lot owner an opportunity to refund his delinquent tax obligations, on an adjusted base, through an installment contract or a 10-year mortgage (payable at any time on or before the due date thereof) with no interest during the first five years of the obligation.

5 The offer was kept open from March to the early part of June 1937 but its acceptance by the City Commission was delayed due to the bitter opposition of a small disgruntled group (who incidentally later formed the nucleus of the present Taxpayers Association) who claimed that their personal interests were jeopardized and that the City, through their efforts, could obtain a much larger cash realization. The matter was made one of the issues of the 1937 City election and the attack made was so acrimonious and bitter that the offer was withdrawn.

6 After the election storm was over and after calm analysis and reason [illegible] from some of the present leaders of the Taxpayers Association, the City Commission, after consultation with over 150 of the leading business men of the City, unanimously found that the "XYZ Contract" was highly advantageous to the City and that the attacks which had been made on it were wholly unfounded. Vigorous efforts were made to revive the contract, but the damage had been done and a renewal of the offer could not be obtained. In the light of subsequent history appearing below, this ill-advised and unfounded attack actually cost the taxpayers of The City of Coral Gables over $150,000 — and still the very men mostly responsible for this loss, continue, under the name of the Taxpayers Association, to prate about economy!!!

7 During July, August and September, 1937, in spite of the most diligent efforts of the City Commission, tax brokers and others, no offers or combination of offers (including those made or negotiated by some of the leading members of the present Taxpayers Association) for all or any part of these delinquent tax assets exceeded the aggregate sum of $300,000. However, largely due to the efforts of George E. Merrick, the Coral Gables Development Company, during the first week of October 1937, was prevailed upon to make a cash offer of $405,000 for an assignment to it of the 1932-1933 delinquent tax certificates and other miscellaneous interests, accompanying which was an agreement to purchase the balance of certificates covering 1936 taxes on all lots affected by the 1932-1935 certificates which they agreed to buy. This offer was promptly accepted by unanimous action of the City Commission and the sale was consummated on

HOW THE CITY COMMISSION SPENT THE $457,691.01 PROCEEDS FROM DELINQUENT TAX ASSETS

11 The following use was made by the present City Commission of the $457,691.01 cash proceeds derived from the October 11, 1937 Contract:

Cash Spent	For What Purpose	Benefit To City
$253,381.31	Was used to acquire from Judgment creditors and hold-out Bondholders fixed indebtedness amounting to $675,274.87. The details appear on the opposite page in the explanation of the disposition of the $295,000 Trust Fund	$675,274.87
1,160.00	Was expended to purchase additional hold-out bonds and coupons amounting to	2,963.00
139,135.47	Was used to pay the entire cost of the bond settlement (1.256% of the total fixed debt, the minimum customary fee for similar services being not less than 2%), as follows:	
	Cost of January 1937 Bond election	1,391.00
	Depositary fees and expenses	4,101.39
	Traveling expenses of City officials	1,764.36
	Legal expense	10,331.39
	Payment of Exerbon CONTINGENT fee	60,000.00
	Payment of Exerbon CONTINGENT expenses	12,000.00
	Printing of bonds, permanent records, etc	4,001.00
	City clerical expense	4,651.35
	Clerk of Circuit Court for execution of Validation Certificates	1,303.50
	Locating unknown bonds, miscellaneous expense items disbursed through $295,000 fund, etc	4,500.00
10,000.00	Was used to reimburse initial advances in purchase of Thies judgment	10,000.00
53,701.12	Was used to purchase, at market, NEW Jan. 1, 1937 Refunding Bonds of the City	116,000.00
313.08	Deposited in Reserve Fund	313.08
$457,691.01		$941,791.43

12 No fair and honest business man would, for one moment, admit that these acts of the City Commission in converting a group of delinquent tax assets of doubtful value into $945,705.43 of actual cash benefit to the City, substantiate the charge of "mismanagement" and "stupid incompetence, or worse" which has been hurled against them by the Taxpayers Association.

A TYPICAL ILLUSTRATION OF MISREPRESENTATION BY THE TAXPAYERS ASSOCIATION

A glaring example of the gross misrepresentation and fraud which certain members of the Taxpayers Association of Coral Gables are attempting to perpetrate upon the voters of Coral Gables is illustrated by the following quotation from a political advertisement which they inserted at page 5 of the Miami Riviera, Issue of June 2, 1939, under the caption of "WHO GOT THE MONEY":

> "But perhaps the most amazing part of the whole transaction is the fact that $295,000 of the money the City was to receive from the sale of its assets, never reached your City treasury.
>
> "Instead, it was deposited to the credit of this fiscal agent of a New York bank and checked out on his signature alone, except for that part of it which represented a portion of his own fee. It was withdrawn from the bank by a series of Cashier's checks, and except for a single instance your present City officials do not know, and such records as they have do not show, to whom these checks were made payable, nor is there in City Hall a single receipt from the actual recipients of the money, nor a cancelled check bearing the endorsement of the payee.
>
> "For this money, the City got $214,134.86 in refunding bonds, and the accompanying tax participation certificates, but the City

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1 ... Atlantic Company, through its subsidiary Coral Gables Development Company, to purchase all of these delinquent tax assets in one group for $575,000 in cash. This offer, popularly known as the "XYZ Contract" provided, among other things, that the City should continue to hold all tax certificates in trust and that there be made available to every lot owner an opportunity to refund his delinquent tax obligations, on an adjusted base, through an installment contract or a 10-year mortgage (payable at any time on or before the due date thereof) with no interest during the first five years of the obligation.

5 The offer was kept open from March to the early part of June 1937 but its acceptance by the City Commission was delayed due to the bitter opposition of a small disgruntled group (who incidentally later formed the nucleus of the present Taxpayers Association) who claimed that their personal interests were jeopardized and that the City, through their efforts, could obtain a much larger cash realization. The matter was made one of the issues of the 1937 City election and the attack made was so acrimonious and bitter that the offer was withdrawn.

6 After the election storm was over and after calm analysis and reason was substituted for the hot and reckless accusations emanating from some of the present leaders of the Taxpayers Association, the City Commission, after consultation with over 150 of the leading business men of the City, unanimously found that the "XYZ Contract" was highly advantageous to the City and that the attacks which had been made on it were wholly unfounded. Vigorous efforts were made to revive the contract, but the damage had been done and a renewal of the offer could not be obtained. In the light of subsequent history appearing below, this ill-advised and unfounded attack actually cost the taxpayers of The City of Coral Gables over $150,000 — and still the very men mostly responsible for this loss, continue, under the name of the Taxpayers Association, to prate about economy!!!

7 During July, August and September, 1937, in spite of the most diligent efforts of the City Commission, tax brokers and others, no offers or combination of offers (including those made or negotiated by some of the leading members of the present Taxpayers Association) for all or any part of these delinquent tax assets exceeded the aggregate sum of $300,000. However, largely due to the efforts of George E. Merrick, the Coral Gables Development Company, during the first week of October 1937, was prevailed upon to make a cash offer of $185,000 for an assignment to it of the 1932-1935 delinquent tax certificates and other miscellaneous interests, accompanying which was an agreement to purchase the balance of certificates covering 1936 taxes on all lots affected by the 1932-1935 certificates which they agreed to buy. This offer was promptly accepted by unanimous action of the City Commission and the sale was consummated on October 11, 1937. The actual cash which the City has realized from this contract is $457,691.01.

8 All of this money, with the exception of $5,000 (which in an emergency the City requested be paid direct to a creditor who was about to take judgment against the City) WAS PAID BY CHECKS MADE PAYABLE DIRECTLY TO THE CITY OF CORAL GABLES. Therefore, the contention of the Taxpayers Association that any part of this money "never reached the City Treasury" is without the slightest foundation.

9 In connection with this October 11, 1937 sale, not one red cent of commission or compensation of any kind or description was directly or indirectly paid to Exerbon or anyone else by either of the parties thereto, although it had been the uniform custom of the City, over a long period of time, to pay a commission of 20% of the cash received from the sale of delinquent tax certificates which were not bought in at the original tax sale. Therefore, the statement appearing in the "Special Exerbon Number" of the Taxpayers Association to the effect that "Doherty thought it was such a good deal for them that they paid Mr. Exerbon a huge fee (reported $50,000) for putting it across" is a deliberate misrepresentation and falsehood.

10 Furthermore, in spite of the assertion of the Taxpayers Association to the contrary, Exerbon had no employment from or connection with the Doherty interests for a period of three months before and almost a year after the sale of the delinquent tax assets was negotiated and consummated.

		15,321.20
	Payment of Exerbon CONTINGENT fee	50,000.00
	Payment of Exerbon CONTINGENT expenses	12,000.00
	Printing of bonds, permanent records, etc	4,525.00
	City clerical expense	4,851.50
	Clerk of Circuit Court for execution of Validation Certificates	2,362.50
	Locating unknown bonds, miscellaneous expense items disbursed through $295,000 fund, etc	8,301.60
10,000.00	Was used to reimburse initial advances in purchase of Thies judgment	10,000.00
53,701.12	Was used to purchase, at market, NEW Jan. 1, 1937 Refunding Bonds of the City	118,000.00
313.88	Deposited in Reserve Fund	313.88
$457,691.01		$845,705.42

12 No fair and honest business man would, for one moment, admit that these acts of the City Commission in converting a group of delinquent tax assets of doubtful value into $845,705.42 of actual cash benefit to the City, substantiate the charge of "mismanagement" and "should incompetence, or worse" which has been hurled against them by the Taxpayers Association.

A TYPICAL ILLUSTRATION OF MISREPRESENTATION BY THE TAXPAYERS ASSOCIATION

A glaring example of the gross misrepresentation and fraud which certain members of the Taxpayers Association of Coral Gables are attempting to perpetrate upon the voters of Coral Gables is illustrated by the following quotation from a political advertisement which they inserted at page 5 of the Miami Riviera, issue of June 2, 1939, under the caption of "WHO GOT THE MONEY":

> "But perhaps the most amazing part of the whole transaction is the fact that $250,000 of the money the City was to receive from the sale of its assets never reached your City treasury.
>
> "Instead, it was deposited to the credit of this fiscal agent in a New York bank and checked out on his signature alone, except for that part of it which represented a portion of his own fee. It was withdrawn from the bank by a series of Cashier's checks, and except for a single instance your present City officials do not know, and such records as they have do not show, to whom these checks were made payable, nor is there in City Hall a single receipt from the actual recipients of the money, nor a cancelled check bearing the endorsement of the payee.
>
> "For this money, the City got $214,151.86 in refunding bonds, and the accompanying tax participation certificates, but the City has no receipt or other record to show how much of the money actually was spent in the purchase of bonds, and how much of it, if any, went elsewhere.
>
> "In short, your present City officials entrusted to a temporary employee the sum of $295,000 of your money, and allowed him to spend it without receiving from him so much as a cancelled check or a receipt to evidence its proper disbursement, and they did not even bother to put him under bond, as required by the City charter."

The same theme was reiterated in the "Special Exerbon Number" issued by the Taxpayers Association in which they said:

> "Mr. Exerbon got $250,000 of your money from your Commissioners which he deposited in his own bank account in New York; disbursed over his own signature alone, and there is no evidence in your City Hall from which you can verify to whom he paid it. The City Finance Director does not know. The City auditors do not know."

A FULL EXPLANATION OF THIS $295,000 TRUST FUND AND A DETAILED ANSWER TO THE QUESTION OF "WHO GOT THE MONEY" AND WHY APPEARS AT LENGTH ON PAGE NINE.

The ringleaders in the ranks of the Taxpayers Association who have been responsible for the current poison pen campaign of misrepresentation, hatred and fraud, have not, for obvious reasons, seen fit to grace their various articles with their own names, but prefer to hide behind the anonymous name of "Taxpayers Association of Coral Gables," most of the members of which have undoubtedly been induced to join by the same line of misrepresentation and fraud which is now being perpetrated on the voters generally.

(Statement to the Taxpayers by Carl L. V. Exerbon — Paid for by him)

Defts' Exhibit 5 page 8 & 9
F. M. Hudson, Master
1674

DETAILED EXPLANATION OF WHO GOT THE $295,000 AND WHY

13 Paragraph Eighth of the October 11, 1939 Contract covering the sale of delinquent tax assets expressly required the City to promptly utilize such portion of the purchase price received under this contract, up to $200,000, as might be necessary to promptly bring about the completion, so far as possible, of the bond refunding plan. For the purpose of complying with this requirement, as well as protecting the funds from attachment and garnishment by belligerent Judgment creditors, the City Commission created a TRUST FUND of $265,000 to be deposited at the Chase National Bank of New York in the name of Carl L. V. Knudsen, Attorney. Protection for in excess of the provisions of the ordinary bond was thrown around this account and no disbursement from this account could be made except with the approval of the City Commission. Below is an itemized accounting, check by check, showing exactly what each penny of this money was used for and WHO GOT THE MONEY.

#	Date	Purchase Price	How Evidenced	"Who Got The Money"	Total Debt Purchased	Nature of Debt
	10-16-37	$33,750.00	Certified check to Central Hanover to pay draft.	Miller & Harris, Attorneys for Helen E. O'Connell	$46,977.81	Judgment in Suit #2127-M-Cir.
	10-19-37	2,000.00	Wired money transfer by Chase National to First Nat'l. Miami for delivery to Casey, Walton & Spain, Attys. for Henry A. Thies			
	10-26-37	12,500.00	Chase National Cashier's Check G-159068 endorsed to Casey, Walton & Spain, Attorneys for Henry A. Thies	Casey, Walton & Spain, Attys. for Henry A. Thies	44,562.50	Balance Judgment Suit #2197-M-Cir.
	10-27-37	26,836.37	Chase National Cashier's Check G-159067	Rybert Mortgage & Securities Corporation	25,112.76 106,276.01	Judgment in Suit #18751 Hold-out Bonds and accrued interest.
	10-19-37	5,000.00	Chase National Cashier's Check G-159064	Fiduciary Counsel, Inc.	5,000.00	Payment on a/c Judgment in Suit #2442-M-Civil.
	10-19-37	5,150.00	Chase National Cashier's Check G-159065	Fiduciary Counsel, Inc.	10,481.70	Hold-out Bonds & accrued interest.
	10-19-37	21,562.50	Chase National Cashier's Check G-159066	Leo K. Steiner	15,151.90 12,043.18 42,961.60	Judgment in Suit #2285-M-Civil Judgment in Suit #2410-M-Civil Hold-out Bonds & Accrued interest.
	10-22-37	4,000.00	Check to Chase National to pay draft	Craig, Allen & Company	17,640.00	Hold-out Bonds & Accrued interest.
	10-22-37	7,500.00	Check to Chase National to pay draft	Walter B. Rogers	27,242.50	Hold-out Bonds & Accrued interest.
	10-26-37	795.00	Check to W. Terry Gibson	W. Terry Gibson, Attorney for Vincent Doherty	700.00	Past due coupons.
	11- 8-37	26,340.00	Chase National Cashier's Check G-160147 to Central Hanover against delivery of Bonds	Ed. C. Wright	25,500.12	Hold-out Bonds & Accrued interest.
	11-10-37	1,277.00	Chase National Cashier's Check G-160152 to Central Hanover to pay draft	M. Blair Corkran	1,005.50	Hold-out Bonds & Accrued interest.
	11-15-37	14,650.00	Chase National Cashier's Check G-160216 to Central Hanover to pay draft	Vincent M. Doherty.	40,140.00	Hold-out Bonds & Accrued interest.
	11-12-37	10,750.00	Chase National Cashier's Check G-160224 $14,000; G-160225 $1,750	Joseph A. Schantz	21,337.50	Hold-out Bonds & Accrued interest.
	11-19-37	2,000.00	Chase National Cashier's Check G-160261 to Central Hanover to pay draft	Julius A. Reif	6,352.50	Hold-out Bonds & Accrued interest.
	11-22-37	2,250.00	Chase Cashier's Check No. G-160278	Mary Alice Everling		
	11-22-37	2,250.00	Chase Cashier's Check No. G-160279	Elsie May Cornman		
	11-22-37	250.00	Chase Cashier's Check No. G-160280	Bd. of Foreign Missions United		
	11-22-37	250.00	Chase Cashier's Check No. G-160281	Bd. of American Lutheran Church		
	11-22-37	694.17	Central Hanover Trust. Ck. No. 24112	Mary Alice Everling	11,965.50	Part payment on Sarah McGuire Estate Judgment.
	11-22-37	694.16	Central Hanover Trust. Ck. No. 24113	Elsie May Cornman		
	11-22-37	90.27	Central Hanover Trust. Ck. No. 24114	Bd. of Foreign Missions United		
	11-22-37	90.26	Central Hanover Trust. Ck. No. 24115	Bd. of American Lutheran Church		
	12- 1-37	848.70	Check to Chase National to pay draft	Vincent M. Doherty	2,070.00	Part due coupons
	12-20-37	3,600.00	Check to Chase National to pay draft	The Natco Corporation, Agts. for Charles A. Krichl	10,750.00	Hold-out bonds & Accrued interest.
	12-29-37	50.00	Check to The Natco Corporation			
	1-17-38	2,000.00	Check to Chase National to pay draft	Lockwood, Sims & Company	14,800.00	Hold-out bonds & Accrued interest.
	1-19-38	4,231.66	Check to City of Coral Gables, proceeds used to purchase Cashier's Check #20741 of Coral Gables First National Bank to Ellen Hopkins	Price & Zaring, Attorneys for Ellen Hopkins	4,231.66	Cash portion of $17,231.66 Judgment & interest in Suit #12300
	2- 8-38	2,975.00	Coral Gables First National Cashier's Checks: #21044, $2750; #21045, $225	Homer J. Rhode	13,900.00	Hold-out bonds & Accrued interest.
	3-28-38	150.00	Check to Chase National to pay draft	Chas. A. Day & Company	1,450.00	Hold-out bonds & Accrued interest.
	5-13-38	1,000.00	Chase National Cashier's Check G-162508 to Underwriters Trust Co.	Robson, Link & Co.	4,850.00	Hold-out bonds & Accrued interest.
		$253,281.34			$575,274.37	
	11-12-37	312.50	Chase National Cashier's Check G-160230	Joseph A. Schantz		Int. 1-1-37 to 6-30-37 on $25,000 Refunding Bonds exchanged.
	11-15-37	6.16	Chase National Charge Voucher	Chase National Bank		Postage & Insurance on Craig-Allen & Walter B. Rogers Bonds.
	12- 2-37	2.00	Check to Alter Wright & Barron	Alter, Wright & Barron		For copy of Sarah McGuire Will.
	12-13-37	19.79	Check to Lincoln Alliance Bank of Rochester	Lincoln Alliance Bank		Postage, Insurance and escrow charges on Joseph A. Schantz bonds.
	12- 8-37	.58	Chase National Charge Voucher	Chase National Bank		

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		Check to Chase National to pay draft	Lockwood, Sims & Company	14,500.00	Hold-out bonds & Accrued Interest.
1-19-38	4,221.60	Check to City of Coral Gables, proceeds used to purchase Cashier's Check #29741 of Coral Gables First National Bank to Ellen Hopkins	Price & Zaring, Attorneys for Ellen Hopkins	4,221.60	Cash portion of $17,221.60 Judgment & interest in Suit @ 12500
2- 9-38	3,975.00	Coral Gables First National Cashier's Checks #21044, $1750; #21043, $225	Homer J. Rhode	13,500.00	Hold-out bonds & Accrued Interest.
2-23-38	150.00	Check to Chase National to pay draft	Chas. A. Day & Company	1,400.00	Hold-out bonds & Accrued Interest.
3-11-38	1,000.00	Chase National Cashier's Check G-162560 to Underwriters Trust Co.	Robson, Link & Co.	4,900.00	Hold-out bonds & Accrued Interest.
	$253,291.34			$375,274.87	
				$37 [illegible]	
11-12-37	312.50	Chase National Cashier's Check G-160290	Joseph A. Schantz		Int. 1-1-37 to 6-30-37 on $25,000 Refunding Bonds exchanged.
11-15-37	6.16	Chase National Charge Voucher	Chase National Bank		Postage & Insurance on Craig-Allen & Walter B. Rogers Bonds.
12- 2-37	2.00	Check to Alter Wright & Barron	Alter, Wright & Barron		For copy of Sarah McGuire Will
12-13-37	19.79	Check to Lincoln Alliance Bank of Rochester	Lincoln Alliance Bank		Postage, Insurance and convey charges on Joseph A. Schantz bonds.
12- 8-37	.36	Chase National Charge voucher	Chase National Bank		Postage & Insurance on Vincent M. Doherty coupons.
12-22-37	1.75	Chase National Charge voucher	Chase National Bank		Postage & Insurance on Chas. A. Eyrich bonds.
1-18-38	1,200.00	Check to The City of Coral Gables	City of Coral Gables		Transfer of City funds to Coral Gables.
1-18-38	30,000.00	Check to Carl L. V. Esselen	Carl L. V. Esselen		Payment on Bond Refunding Int.
1-20-38	2.00	Chase National Charge voucher	Chase National Bank		Postage & Insurance on Lockwood, Sims & Company bonds.
3- 5-38	5,100.00	Check to The City of Coral Gables	City of Coral Gables		Transfer of City funds to Coral Gables.
3-28-38	140.53	Currency check	Accounting expense		Bond Refunding accounting expense.
3- 5-38	1,825.28	Check to The City of Coral Gables	City of Coral Gables		Money transfer to City to close account.
	$295,000.00				

X

Available at the City Hall, subject to the inspection of any interested taxpayer, are photostatic copies of the front and back of every Cashier's check (every informed business man knowing that no bank permits the original of its Cashier's checks to be taken from the bank records), other cancelled checks, original receipts, cancelled drafts, original bank statements, assignments and all original documents bearing on or in any way connected with any of the above described transactions, as well as all other data to explain in the most minute detail the disposition of these funds. From time to time as these expenditures were made, all these original records were carefully checked and audited by the Director of Finance and finally by the certified public accountant firm of Portland, Purvis, Keller and Milton. COPY OF THESE RECORDS WERE PERMANENTLY PLACED IN THE FILES OF THE CITY IN JANUARY 1938 AND THE LAST OF THESE IN THE EARLY SPRING OF 1938. No disbursements from these funds were made except on order of the City Commission and immediately upon the consummation of every transaction, Bondmen delivered all documents and records in connection therewith to the City and has in his possession official receipts from the proper City officials as indisputable evidence of this fact.

16 A fair and honest exchange of divergent views and opinions in a political campaign is desirable and gratifying wholesome, but when a political campaign is carried on with utter disregard for the truth and perverted for the purpose of attempted character assassination and inciting unwarranted dissatisfaction, hatred and strife, then the bounds of wholesomeness, decency and good citizenship have been transgressed. The voters of this City on June 13th will undoubtedly make clear that there is no place in Coral Gables for tactics which even a Tammany ward-leader would not stoop to in the ghetto of New York.

17 The present and past City Commissions are frequently referred to in national municipal and banking circles as conspicuously outstanding examples of clean, honest and efficient men in public service. Their conscientious and never-tiring efforts in the interest of our fair City entitle them to the highest praise and respectful appreciation instead of vituperative abuse.

(Statement to the Taxpayer by Geo. E. F. Gilchrist — Paid for by him)

1676 DEFENDANTS' EXHIBIT 7.

Filed March 5, 1941, F. M. Hudson, Master.

Resolution No. 1608.

A Resolution Appointing Carl L. V. Exselsen Exclusive Representative of the City to Negotiate a Debt Refunding Plan in Conjunction with the Mayor and City Commissioners.

Whereas, recent developments and Supreme Court decisions have made it impractical to refund the indebtedness of the City without amending the February 1936 Refunding Plan; and

Whereas, it has also become essential to negotiate with many creditors not heretofore contacted and not committed to said Plan; and

Whereas, it is vitally important to the City to conclude a refunding of its outstanding indebtedness as soon as reasonably and practically possible provided such a refunding can be accomplished within the present and prospective maximum capacity of the City to pay; and

Whereas, to accomplish such a result it is important that the City have an exclusive representative to conduct negotiations with its many creditors in conjunction with the Mayor and members of the City Commission;

Now, Therefore, Be It Resolved By The City Commission Of The City Of Coral Gables:

1. That the maximum capacity of the City to pay debt service is:

(a) $4,000,000 Refunding Bonds maturing in approximately 40 years;

(b) Debt service demands, including payments of both interest and payments on account of principal, not to exceed the yearly amounts shown in the following schedule:

$100,000.00	per year	for	5 years
140,000.00	per year	for	5 years
200,000.00	per year	for	5 years
240,000.00	per year	for	10 years
280,000.00	per year	for	10 years
300,000.00	per year	for	4 years

and until paid in full

and (c) the City to make available to the creditors, in any legal form desired by them and approved by the City Attorney, all delinquent tax assets represented by delinquent and/or back assessed taxes against all properties which are at the date of refunding delinquent for the year 1934 and prior years.

2. That Carl L. V. Exselsen, of New York City, New York, be and he hereby is authorized jointly with the Mayor and/or any member or members of the City Commission to exclusively represent The City of Coral Gables in all negotiations with Bondholders and other creditors of the City for the purpose of working out the terms and details of an amended debt refunding program.

Passed and Adopted this 1st Day of October, 1936.

1687 DEFENDANT'S EXHIBIT 12.

For Identification, F. M. Hudson, Master.

Partial Satisfaction of Judgment.

In the United States District Court in and for the Southern District of Florida, Miami Division.

Fiduciary Counsel, Inc., a corporation, Plaintiff,
vs. #2442-M Civil.
City of Coral Gables, a Municipal Corporation under the Laws of the State of Florida, Defendant.

Now comes the Plaintiff in the above entitled cause and would show unto the Court that it has received for the account of the Defendant the sum of Eight Thousand ($8,000.00) Dollars, which sum constitutes a partial payment on account of the principal of that certain Judgment heretofore entered in the above entitled cause on the 26th day of July, A. D. 1937 in the amount of One Hundred Thirty Thousand Eight Hundred Seventy-eight dollars and Twenty-one Cents ($130,878.21), the same being recorded in Miami Judgment Book No. 2 at page 169, of the records of the United States District Court in and for the Southern District of Florida, Miami Division.

In consideration thereof, the Plaintiff does hereby acknowledge payment of and grant to the defendant Partial Satisfaction of said judgment in the amount of Eight Thousand ($8,000.00) Dollars and hereby authorizes and directs the Clerk of the above entitled Court to enter on his judgment records the notation of said partial satisfaction.

In Witness Whereof, the Fiduciary Counsel, Inc. has hereunto caused its hand and seal to be affixed this the 19th day of October, A. D. 1937.

FIDUCIARY COUNSEL, INC.,
By CHARLES A. BRIGGS II,
As Vice President.

Attest:
E. K. WOLFE,
As Secretary.
(Seal)

W. TERRY GIBSON,
Counsel for the Plaintiff.

FRANK W. BRYAN,
LAURENCE PAYNE,
(Witnesses).

State of New York,
County of New York.

I Hereby Certify that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Charles A. Briggs II and E. K. Wolfe, to me well known to be respectively the Vice President and Secretary of the Fiduciary Counsel, Inc., 14 Wall Street, New York City, and said officials did certify to me that they executed the above and foregoing Partial Release of Judgment for and on behalf of the said Fiduciary Counsel, Inc. and that they had full power and authority so to do.

In Witness Whereof, I have hereunto set my hand and affixed my seal at New York City, this the 19th day of October, A. D. 1937.

BRUCE McCLAIN,
Notary Public, Westchester County.
(Seal)

Cert. filed in N. Y. Co. No. 326, Reg. No. 8-Mc-195.

Commission expires March 30, 1938.

DEFENDANT'S EXHIBIT 13.

For Identification, F. M. Hudson, Master.

1689 ASSIGNMENT OF JUDGMENT.

This Indenture made this 9th day of August, A. D. 1937, between Helen E. O'Connell, a single woman, party of the first part, and ....., party of the second part.

Whereas, the party of the first part on the 16th day of July, A. D. 1937, recovered by judgment rendered in the United States District Court in and for the Southern District of Florida against City of Coral Gables, a municipal corporation organized and existing under the laws of the State of Florida, the sum of Forty Thousand Three Hundred Seventy-two and 36/100 ($40,372.36) Dollars, which judgment is entered in Judgment Book 2, at page 152, of the records of said Court.

Now, Therefore, This Indenture Witnesseth: That the party of the first part, in consideration of Ten ($10.00) Dollars and other good and valuable considerations to her in hand paid, the receipt whereof she does hereby acknowledge, by these presents does assign, transfer and set over to the party of the second part, the said judgment and all sums of money that may be had or obtained by means thereof or upon the same, or on any proceedings to be had thereon. And party of the first part does hereby constitute and appoint the party of the second part, or his assignee, her true and lawful attorney irrevocable, with the power of substitution and revocation, for the use and at the proper costs and charges of the party of the second part, to ask, demand, and receive, and to sue out executions and to take all lawful ways for the recovery of the money due or to become due on said judgment; and upon payment to acknowledge satisfaction, or discharge the same. And party of the first part does hereby convenant

that there is now due on said judgment the sum of Forty Thousand Three Hundred Seventy-two and 36/100 ($40,-372.36) Dollars, with legal interest thereon from the 16th day of July, A. D. 1937, and that the said judgment is free from the lien or liens of any parties.

In Witness Whereof the party of the first part has hereunto set her hand at New York, in the State of New York, this 9 day of August, A. D. 1937.

HELEN E. O'CONNELL.

Signed, sealed and delivered in the presence of:
ESTELLE R. O'CONNELL,
ZELLA F. O'CONNELL.

State of New York,
County of New York, ss.

I Hereby Certify that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Helen E. O'Connell, a single woman, to me well known to be the person described in and who executed the foregoing Assignment of Judgment, and acknowledged before me that she executed the same freely and voluntarily for the purposes therein expressed.

Witness my hand and official seal at New York, N. Y. in the County and State aforesaid, this 9 day of August, A. D. 1937.

T. D. JENKINS,
Notary Public.
THOMAS D. JENKINS,
Notary Public, Nassau Co.
2141 N. Y. Co. Clk's No. 234,
Reg. No. 8J151.

Commission expires March 30, 1938.

My commission expires: 3/30/38.

DEFENDANT'S EXHIBIT 14.

For Identification, F. M. Hudson, Master.

1691 ASSIGNMENT OF JUDGMENT.

In the United States District Court in and for the Southern District of Florida. Miami Division.

Henry A. Thies, Plaintiff,

vs. #2397-M-Civil.

The City of Coral Gables, a Municipal Corporation under the laws of the State of Florida, Defendant.

For And In Consideration Of The Sum Of Ten ($10.00) Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged, I, Henry A. Thies, of New York City, New York, do hereby sell, assign, transfer and set over unto Carl L. V. Exselsen, his heirs and assigns, all of my right, title and interest in and to that certain Final Judgment rendered in my favor on the 28th day of August, A. D. 1937, in the United States District Court in and for the Southern District of Florida, Miami Division, in case No. 2397-M-Civil, entitled Henry A. Thies, Plaintiff, against the City of Coral Gables, a Municipal Corporation of Dade County, Florida, defendant, which said Final Judgment now appears of record in Miami Judgment Book #2 at page 192 of the records of the United States District Court for the Southern District of Florida, Miami Division, for the sum of Fifty-four Thousand Seven Hundred Seventy-nine and 99/100 ($54,779.99) Dollars together with costs taxed in the amount of $22.60, with interest thereon from date, together with all and every right which I may have therein and thereto, and any and all sum or sums of money that may be due there-

on or may be had or obtained by means thereof or on any proceedings to be had thereupon.

And I, Henry A. Thies, do hereby covenant that I am the owner and holder of the above described Final Judgment, that the full amount awarded in said Final Judgment is now due and owing, that no part thereof has been paid, and that I will not collect or receive the sum due under said judgment or any part thereof, nor release or discharge the said judgment, but will confirm and allow all lawful proceedings therein and thereon.

And I do hereby constitute and appoint the said Carl L. V. Exselsen and his executors, administrators and assigns, my true and lawful attorneys, irrevocable, with power of substitution and revocation, for the use and at the proper costs and charges of the said Carl. L. V. Exselsen, his executors, administrators and assigns, to ask, demand and receive and to sue out all executions and to take all lawful ways for the recovery of the money due or to become due on said judgment, and on payment to acknowledge satisfaction or discharge the same; hereby ratifying and confirming all that the said attorney or substitute shall lawfully do in the premises.

In Witness Whereof, I, Henry A. Thies, have hereunto set my hand and seal on this the 28th day of October, A. D. 1937 at New York county of New York, State of New York.

(Seal) HENRY A. THIES.

Signed, sealed and delivered in the presence of:
HERBERT J. SIMS,
SEYMOUR E. SIMS.

State of New York,
County of New York, ss.

I Hereby Certify that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Henry A. Thies, to me well known, and known to me to be the person described in the foregoing instrument, who this day acknowledged before me that he is the owner and holder of the final judgment described in the foregoing instrument, and that he executed the foregoing Assignment of Judgment as and for his free act and deed for the uses and purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my seal at New York, this 28th day of October, A. D. 1937.

HOWARD S. OHLSEN,
Notary Public.

Notary Public, Bronx Co. Clerk's No. 9.

Bronx Co. Register's No. 9-0-38.

Certificate filed in N. Y. Co. No. 92.

N. Y. Register's Office No. 8-0-52.

Term expires March 30, 1938.

DEFENDANT'S EXHIBIT 15.

For Identification, F. M. Hudson, Master.

1694 ASSIGNMENT OF JUDGMENT.

In the District Court of the United States, in and for the Southern District of Florida. No. 2397-M-Civ.

Henry A. Thies, Plaintiff,

vs.

City of Coral Gables, a municipal corporation, Defendant.

Know All Men By These Presents, That I, Carl L. V. Exselsen, of the City of Miami, State of Florida, in consideration of Ten Dollars ($10.00) and other good and valuable considerations to me in hand paid, the receipt whereof is hereby acknowledged, do hereby sell, assign, transfer and convey to all my right, title and interest in and to a certain Judgment recovered on the 28th day of August, A. D. 1937 by Henry A. Thies in the United States District Court in and for the Southern District of Florida, Miami Division, against The City of Coral Gables in the sum of Fifty-Four Thousand Seven Hundred Seventy-nine and 99/100 ($54,779.99) Dollars and $22.60 costs (said Judgment being recorded in Miami Judgment Book ..... at Page ..... of the records of the United States District Court for the Southern District of Florida, Miami Division), the above mentioned Judgment having been heretofore duly assigned to me by Henry A. Thies, the owner and holder of said Judgment at the time of said assignment to me.

And I do hereby constitute and appoint the said ..... and his executors, administrators and assigns, my true and lawful attorneys, irrevocable, with power of substitution and revocation, for the use and at the proper cost and charges of the said ..... his executors, administrators and assigns, to ask, demand and receive and to sue out all executions and to take all lawful ways for the recovery of the money due or to become due on said judgment, and on payment to acknowledge satisfaction or discharge the same; hereby ratifying and confirming all that the said attorney or substitute shall lawfully do in the premises.

In Witness Whereof, I, Carl L. V. Exselsen, have hereunto set my hand and seal on this the 24th day of Janu-

ary, A. D. 1938, at Miami, County of Dade and State of Florida.

(Seal) CARL L. V. EXSELSEN.

Signed, sealed and delivered in the presence of:
JOHN G. THOMAS,
S. E. WINFREE.

State of Florida,
County of Dade.

I Hereby Certify that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Carl L. V. Exselsen, to me well known and known to me to be the person described in the foregoing instrument, who this day acknowledged before me that he is the owner and holder by assignment of the final judgment described in the foregoing instrument, and that he executed the foregoing Assignment of Judgment as and for his free act and deed for the uses and purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my seal at Miami, in said County and State, this 24th day of January, A. D. 1938.

EVELYN MARIK,
Notary Public, State of Florida, at large.

My commission expires Nov. 10, 1941.

1697 DEFENDANT'S EXHIBIT 16.

For Identification, F. M. Hudson, Master.

This Agreement made and entered into this 19th day of

October, A. D. 1937 by and between Carl L. V. Exselsen, hereinafter referred to as "Exselsen" and the Rybert Mortgage & Securities Corporation, a Florida Corporation, hereinafter referred to as the "Rybert Corporation";

Witnesseth:

Whereas, the said Rybert Corporation at the present time is the owner and holder of a final Judgment against The City of Coral Gables in the sum of Twenty-four Thousand Seven Hundred Ninety three Dollars and Eighteen Cents ($24,793.18) plus Nine Dollars and Fifty-five Cents ($9.55) costs, entered in case No. 16751 (at Law) in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County; and

Whereas, the said Rybert Corporation is the owner and holder of Ninety-one Thousand Dollars ($91,000.00) par value of Bonds heretofore issued by The City of Coral Gables, said bonds with accompanying coupons being more particularly described in "Exhibit A" attached hereto and by express reference made a part hereof; and

Whereas, said Exselsen is desirous of purchasing all interest of the Rybert Corporation in and to: (1) the subject matter of said Suit No. 16751 and the Judgment therein obtained; (2) the subject matter of Suits Nos. 16863-D and 16688 in the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, Florida; and (3) the Ninety-one Thousand Dollars ($91,999.00) par value of bonds and the accompanying coupons described in "Exhibit A";

Now, Therefore, for and in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations by each to the other in hand paid the receipt where-

of is hereby acknowledged, the following agreement is entered into by and between the parties hereto, as follows, to-wit:

First: The Rybert Corporation does hereby sell, transfer and set over to said Exselsen, in consideration of the payment of Sixty-Six Thousand Thirty-six Dollars and Thirty-seven Cents ($66,036.37), all its right, title, interest and claims in and to:

(a) The subject matter of Suit No. 16751 in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, under the style of Rybert Mortgage & Securities Corporation vs. The City of Coral Gables, together with all and every right which it may have therein and thereto and any and all sum or sums of money that may be due thereon or may be had or obtained by means thereof or on any proceedings to be had thereupon, or in connection with the Judgment obtained in said suit on July 17, 1937;

(b) Those two certain suits in the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, Nos. 16863-D and 16688, wherein the Rybert Corporation is the Relator and The City of Coral Gables, Florida is the Respondent, which cases are mandamus actions for funds;

(c) The bonds and coupons described in detail in "Exhibit A" which is attached hereto and by reference made a part hereof, all of which bonds and coupons the Rybert Corporation warrants that it owns and has the full right to transfer and convey.

Second: The Rybert Corporation agrees to promptly execute and deliver all authorizations, assignments or other documents or papers incident or necessary to carrying out the terms, provisions and intent of this Agreement.

Third: Exselsen agrees to purchase the assets set forth in First hereof and to promptly pay therefor the sum of Sixty-six thousand Thirty-six Dollars and Thirty-seven cents $66,036.37 upon delivery thereof.

Fourth: It is further agreed between the parties hereto that all the terms, stipulations and agreements herein contained shall extend to and be binding upon the heirs, executors, administrators and assigns of the respective parties hereto.

Fifth: It is expressly understood and agreed that the Rybert Corporation will furnish the said Exselsen with minutes of meeting authorizing the execution and delivery of this contract, together with a duplicate copy of this contract duly executed, sealed and delivered by the officers duly authorized in this behalf.

In Witness Whereof, the Rybert Mortgage & Securities Corporation has caused this agreement to be signed by its President and caused its corporate seal to be hereunto affixed, duly attested by its Secretary and the said Carl L. V. Exselsen has hereunto affixed his hand and seal this the 19th day of October, A. D. 1937.

Signed, sealed and delivered in the presence of:

(Seal) CARL L. V. EXSELSEN,

RYBERT MORTGAGE & SECURITIES CORPORATION,

(Signed) By J. P. LEA, JR.,
President.

Attest:

(Seal) (Signed) W. T. GIBSON,
Secretary.

(Signed) S. E. WINFREE,
(Signed) HELEN LAING,
(Signed) MILDRED COX,
(Signed) E. W. MONTEITH.

"EXHIBIT A."

City of Coral Gables 5½% Permanent Improvement Bonds Dated December 1, 1925.

Numbers	Maturity	Principal Amount	Matured Coupons Attached	Par Value Matured Coupons	Interest After Maturity To	Interest After Maturity Amount	Unmatured Coupons Attached
162/165	10-1-41	$4,000.00	#21-23 Inc.	$ 330.00			#24-32 Inc.
179/180	12-1-41	2,000.00	21-23 Inc.	165.00			24-32 Inc.
		$6,000.00		$ 495.00			

City of Coral Gables 5½% Permanent Improvement Bonds Dated April 1, 1926.

586/587	4-1-34	2,000.00	#11-16 Inc.	$ 330.00	10-1-37	$ 385.00	.....
656	4-1-40	1,000.00	18-23 Inc.	165.00			#24-28 Inc.
667/671	4-1-41	5,000.00	18-23 Inc.	825.00			24-30 Inc.
667	4-1-41	1,000.00	18-23 Inc.	165.00			24-30 Inc.
685/688	4-1-42	4,000.00	18-23 Inc.	660.00			24-32 Inc.
694	4-1-42	1,000.00	18-23 Inc.	165.00			24-32 Inc.
718/721	4-1-44	4,000.00	18-23 Inc.	660.00			24-36 Inc.
723/725	4-1-44	3,000.00	18-23 Inc.	495.00			24-36 Inc.
733/742	4-1-45	10,000.00	18-23 Inc.	1,650.00			24-38 Inc.
754/758	4-1-46	5,000.00	18-23 Inc.	825.00			24-40 Inc.

Numbers	Maturity	Principal Amount	Matured Coupons Attached	Par Value Matured Coupons	Interest After Maturity To	Interest After Maturity Amount	Unmatured Coupons Attached
775/779	4-1-47	5,000.00	18-23 Inc.	825.00			24-42 Inc.
788/790	4-1-47	3,000.00	18-23 Inc.	495.00			24-42 Inc.
		$44,000.00		$7,260.00		$ 385.00	

City of Coral Gables 6% Improvement Bonds Dated July 1, 1926.

890	7-1-33	$1,000.00	#13-14	$ 60.00	7-1-37	$ 240.00	
894	7-1-33	1,000.00	13-14	60.00	7-1-37	240.00	
906	7-1-34	1,000.00	11-16 Inc.	180.00	7-1-37	180.00	
1213/14	7-1-35	2,000.00	11-16 & 18	420.00	7-1-37	240.00	
1215	7-1-35	1,000.00	12-16 & 18	180.00	7-1-37	120.00	
1713/17	7-1-38	5,000.00	20-22 Inc.	450.00			#23-24
		$11,000.00		$1,350.00		$1,020.00	

City of Coral Gables 6% Municipal Improvement Bonds Dated Jan. 1, 1927.

537/538	1-1-35	$2,000.00	#10-16 Inc.	$ 420.00	7-1-37	$ 300.00	
630/632	1-1-35	3,000.00	10-16 Inc.	630.00	7-1-37	450.00	

1004/05	1-1-38	2,000.00	17-21 Inc.	300.00		#22
1849/50	1-1-42	2,000.00	17-21 Inc.	300.00		22-30 Inc.
1936/39	1-1-43	4,000.00	17-21 Inc.	600.00		22-32 Inc.
2660/61	1-1-46	2,000.00	17-21 Inc.	300.00		22-38 Inc.
3232	1-1-47	1,000.00	10-21 Inc.	360.00		22-40 Inc.
3333	1-1-48	1,000.00	17-21 Inc.	150.00		22-42 Inc.
3365/69	1-1-49	5,000.00	17-21 Inc.	750.00		22-44 Inc.
3371/75	1-1-49	5,000.00	17-21 Inc.	750.00		22-44 Inc.
3377	1-1-49	1,000.00	17-21 Inc.	150.00		22-44 Inc.
3885	1-1-53	1,000.00	17-21 Inc.	150.00		22-52 Inc.
4012	1-1-54	1,000.00	17-21 Inc.	150.00		22-54 Inc.
		$30,000.00		$5,010.00	$ 750.00	
Grand Totals.....		$91,000.00		$14,115.00	$2,155.00	

DEFENDANT'S EXHIBIT 17.

For Identification, F. M. Hudson, Master.

1702 ASSIGNMENT OF JUDGMENT.

Florida, In and for Dade County.

Rybert Mortgage & Securities Corporation, a Florida Corporation, Plaintiff,

vs. At Law #16751.

City of Coral Gables, a Municipal Corporation under the laws of the State of Florida, Defendant.

For And In Consideration of the sum of Ten ($10.00) Dollars and other good and valuable considerations, the receipt of which is hereby acknowledged, Rybert Mortgage & Securities Corporation, a Florida Corporation with its principal place of business at 209 South Olive Ave., West Palm Beach, Florida, does hereby sell, assign, transfer and set over unto Carl L. V. Exselsen, all of its right, title and interest in and to that certain Final Judgment rendered in its favor on the 17th day of July, A. D. 1937, in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida, in Case No. 16751 at Law, entitled Rybert Mortgage & Securities Corporation, a Florida Corporation, Plaintiff, against The City of Coral Gables, a municipal corporation of Dade County, Florida, Defendant, which said Final Judgment now appears in the public records of Dade County, Florida, in Judgment Book ....., at Page ....., said Judgment being in the sum of Twenty-Four Thousand Seven Hundred Ninety-Three Dollars and Eighteen cents ($24,793.18) plus the Court costs taxed at $9.55, with interest thereon as provided by law, together with all and every right which the said Rybert Mortgage & Securities Corporation may have therein and thereto and any and all sum or sums of money that may be due thereon or may be had or obtained by means thereof or on any proceedings to be had thereupon.

And the said Rybert Mortgage & Securities Corporation does hereby covenant that it is the owner and holder of the above described final judgment, that the full amount awarded in said final judgment is now due and owing, that no part thereof has been paid and that it will not collect or receive the sum due under said judgment or any part thereof, nor release or discharge the said judgment, but will confirm and allow all lawful proceedings therein and thereon.

The Rybert Mortgage & Securities Corporation hereby constitutes and appoints the said Carl L. V. Exselsen and his executors, administrators and assigns, its true and lawful attorneys, irrevocable, with power of substitution and revocation, for the use and at the proper cost and charges of the said Carl L. V. Exselsen, his executors, administrators and assigns, to ask, demand and receive and to sue out all executions and to take all lawful ways for the recovery of the money due or to become due on said judgment, and on payment to acknowledge satisfaction or discharge the same; hereby ratifying and confirming all that the said attorney or substitute shall lawfully do in the premises.

In Witness Whereof, the said Rybert Mortgage & Securities Corporation has caused this Assignment of Judgment to be executed in its name by its Attorney of record, this the 19th day of October, A. D. 1937.

RYBERT MORTGAGE & SECURITIES CORPORATION,
(Signed) By W. TERRY GIBSON,
Attorney of Record for Rybert Mortgage & Securities Corporation.

Signed, sealed and delivered in the presence of:

(Signed) S. W. WINFREE,
HELEN LAING.

State of New York,
County of New York.

I Hereby Certify that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, W. Terry Gibson, to me well known and known to me to be the person described in the foregoing instrument and who this day acknowledged before me that he is the attorney of record for the Rybert Mortgage & Securities Corporation, a Florida Corporation, that said corporation is the owner and holder of the final judgment described in the foregoing instrument, that he executed the foregoing Assignment of Judgment and that he had full authority so to do.

In Witness Whereof, I have hereunto set my hand and affixed my seal at New York, City, New York, this the 19th day of October, A. D. 1937.

(Signed) HELEN LAING,
(Seal) Notary Public, New York County, Clerk's No. 14, Register's No. 8-L-345.

Commission expires March 30, 1938.

DEFENDANT'S EXHIBIT #18.

For Identification, F. M. Hudson, Master.

1705 ASSIGNMENT OF JUDGMENT.

In the Circuit Court of the Eleventh Judicial Circuit of Florida. In and for Dade County.

Rybert Mortgage & Securities Corporation, a Florida corporation, Plaintiff,

vs. At Law #16751.

City of Coral Gables, a Municipal Corporation under the laws of the State of Florida, Defendant.

For And In Consideration of the sum of Ten ($10.00) Dollars and other good and valuable considerations, the receipt of which is hereby acknowledged, Rybert Mortgage & Securities Corporation, a Florida Corporation with its principal place of business at 209 South Olive Ave., West Palm Beach, Florida, does hereby sell, assign, transfer and set over unto Carl L. V. Exselsen, all of its right, title and interest in and to that certain Final Judgment rendered in its favor on the 17th day of July, A. D. 1937 in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida, in Case No. 16751 at Law, entitled Rybert Mortgage & Securities Corporation, a Florida Corporation, Plaintiff, agains The City of Coral Gables, a municipal corporation of Dade County, Florida, Defendant, which said Final Judgment now appears in the public records of Dade County, Florida, in Judgment Book ....., at Page ....., said Judgment being in the sum of Twenty-four Thousand Seven Hundred Ninety-three Dollars and Eighteen Cents ($24,793.18), plus the Court costs taxed $9.55, with interest thereon as

provided by law, together with all and every right which the said Rybert Mortgage & Securities Corporation may have therein and thereto and any and all sum or sums of money that may be due thereon or may be had or obtained by means thereof or on any proceedings to be had thereupon.

And the said Rybert Mortgage & Securities Corporation does hereby covenant that it is the owner and holder of the above described final judgment, that the full amount awarded in said final judgment is now due and owing, that no part thereof has been paid and that it will not collect or receive the sum due under said judgment or any part thereof, nor release or discharge the said judgment, but will confirm and allow all lawful proceedings therein and thereon. Provided, however, Assignor does not warrant the collectibility of the amounts due hereunder nor shall any liability attach to the Assignor in this regard.

The Rybert Mortgage & Securities Corporation hereby constitutes and appoints the said Carl L. V. Exselsen and his executors, administrators and assigns, its true and lawful attorney, irrevocable, with power of substitution and revocation, for the use and at the proper cost and charges of the said Carl L. V. Exselsen, his executors, administrators and assigns, to ask, demand and receive and to sue out all executions and to take all lawful ways for the recovery of the money due or to become due on said judgment, and on payment to acknowledge satisfaction or discharge the same; hereby ratifying and confirming all that the said attorney or substitute shall lawfully do in the premises.

This assignment is given to confirm that certain assignment of the same judgment, given by W. T. Gibson as At-

torney for Rybert Mortgage & Securities Corporation, dated October 19th, 1937, except as modified herein.

In Witness Whereof, the said Rybert Mortgage & Securities Corporation has caused this Assignment of Judgment to be signed by its President and caused its corporate seal to be hereunto affixed duly attested by its Secretary, this the 19th day of October, A. D. 1937.

RYBERT MORTGAGE & SECURITIES CORPORATION,

(Signed) By J. P. LEA,
President.

Attest:

(Signed) W. T. GIBSON,
(Seal) Secretary.

Signed, sealed and delivered in the presence of:
(Signed) MILDRED COX,
(Signed) E. W. MONTEITH.

State of Florida,
County of Palm Beach.

I Hereby Certify that on this 19th day of October, A. D. 1937, before me personally appeared J. P. Lea, Jr., and W. T. Gibson, President and Secretary, respectfully of Rybert Mortgage & Securities Corporation, a corporation under the laws of the State of Florida, to me well known to be the persons who signed the foregoing Assignment of Judgment as such officers and severally acknowledged the execution thereof to be their free act and deed as such officers for the uses and purposes therein mentioned; that the said corporation is the owner and holder of the final judgment described in the foregoing instrument; that they affixed thereto the official seal of said corporation and that the said instrument is the act and deed of said corporation.

Witness my signature and official seal at West Palm Beach in the County of Palm Beach and State of Florida, the day and year last aforesaid.

(Signed) MILDRED COX,
Notary Public, State of Florida at Large.

My Commission Expires June 18, 1941.

DEFENDANT'S EXHIBIT #19.

For Identification, F. M. Hudson, Master.

1709 ASSIGNMENT OF JUDGMENT.

In the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County.

Rybert Mortgage & Securities Corporation, A Florida Corporation, Plaintiff,
vs. At Law #16751.
City of Coral Gables, a Municipal Corporation under the laws of the State of Florida, Defendant.

Know All Men By These Presents, That I, Carl L. V. Exselsen, of the City of Miami, State of Florida, in consideration of Ten Dollars ($10.00) and other good and valuable considerations to me in hand paid, the receipt whereof is hereby acknowledged, do hereby sell, assign, transfer and convey to .....
all my right, title and interest in and to a certain Judgment recovered on the 17th day of July, A. D. 1937 by Rybert Mortgage & Securities Corporation in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, against The City of Coral Gables in the

sum of Twenty-four Thousand Seven Hundred Ninety-Three Dollars and Eighteen Cents ($24,793.18) and $9.55 costs (said Judgment being recorded in Miami Judgment Book ..... at Page ..... of the records of the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County), the above-mentioned Judgment having been heretofore duly assigned to me by Rybert Mortgage & Securities Corporation, the owner and holder of said Judgment at the time of said assignment to me.

And I do hereby constitute and appoint the said ..... and his executors, administrators and assigns, my true and lawful attorneys, irrevocable, with power of substitution and revocation, for the use and at the proper cost and charges of the said..... his executors, administrators and assigns, to ask, demand and receive and to sue out all executions and to take all lawful ways for the recovery of the money due or to become due on said judgment, and on payment to acknowledge satisfaction or discharge the same; hereby ratifying and confirming all that the said attorney or substitute shall lawfully do in the premises.

In Witness Whereof, I, Carl L. V. Exselsen, have hereunto set my hand and seal on this the 24th day of January, A. D. 1938, at Miami, County of Dade and State of Florida.

(Seal) CARL L. V. EXSELSEN.

Signed, sealed and delivered in the presence of:
JOHN G. THOMAS,
S. E. WINFREE.

State of Florida,
County of Dade.

I Hereby Certify that on this day personally appeared

before me, an officer duly authorized to administer oaths and take acknowledgments, Carl L. V. Exselsen, to me well known and known to me to be the person described in the foregoing instrument, who this day acknowledged before me that he is the owner and holder by assignment of the final judgment described in the foregoing instrument, and that he executed the foregoing Assignment of Judgment as and for his free act and deed for the uses and purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my seal in Miami, in said County and State, this 24th day of January, A. D. 1938.

EVELYN MARIK,
Notary Public, State of Florida at large.

(Seal)

My commission expires Nov. 10, 1941.

1712 DEFT'S EX. #20.

Resolution No. 1762.

A Resolution Authorizing a Special Contract and Escrow Agreement for the Purpose of Refunding the Sarah McGuire Judgment and Satisfying the Sarah McGuire Mortgage with the Present Owners and Holders of said Judgment and Mortgage.

Whereas, Mary Alice Everling, Elsie May Cornman, The Board of Foreign Missions of the United Lutheran Church in America, and the Board of American Missions of the United Lutheran Church in America, as Devisees and Beneficiaries under the Will of Sarah McGuire, are the present owners and holders of a certain judgment

against The City of Coral Gables in favor of Sarah McGuire, dated July 9th, 1930, in the principal sum of $71,-965.50, and the owners and holders of a valid subsisting mortgage further securing the payment of said judgment upon the following described property owned by and located in The City of Coral Gables, Dade County, Florida, to wit:

The South Half (S½) of the Northwest Quarter (NW¼) of the Northwest Quarter (NW¼) of the Northeast Quarter (NE¼) of Section Eighteen (18), Township Fifty-four (54) South, Range Forty-one (41) East, in Dade County, Florida; and

Whereas, The said owners of said judgment and mortgage have made a special written proposition, in the form of a contract and an escrow agreement, to the City for the compromise, adjustment and refunding of the principal and interest due upon said judgment and for the satisfaction and discharge of the said mortgage,

Now, Therefore, be it resolved by the Commission of the City of Coral Gables:

1. That the Memorandum of Agreement between The City of Coral Gables and Mary Alice Everling, Elsie May Cornman, The Board of Foreign Missions of the United Lutheran Church in America, and The Board of American Missions of the United Lutheran Church in America, as Devisees and Beneficiaries under the Will of Sarah McGuire, dated November 22nd, 1937, and the Escrow Agreement of the same date between The City of Coral Gables and Mary Alice Everling and Elsie May Cornman and The Union Trust Company of Pittsburgh, be and the same are hereby accepted and approved as and for the best interests of the City of Coral Gables, in words and figures as follows:

Memorandum of Agreement, Made and entered into this 22nd day of November, A. D. 1937 by and between The City of Coral Gables, a municipal corporation created and existing under the laws of the State of Florida (hereinafter sometimes called the "City"), and Mary Alice Everling, Elsie May Cornman, The Board of Foreign Missions of The United Lutheran Church in America, and The Board of American Missions of The United Lutheran Church in America, as Devisees and Beneficiaries under the Will of Sarah McGuire, deceased, (hereinafter sometimes referred to as the "Devisees"), Witnesseth:

Whereas, on the 9th day of July, 1930 a judgment in the sum of $71,965.50 was entered in the Circuit Court of Dade County in and for the State of Florida in favor of Sarah McGuire and against The City of Coral Gables, Florida, on which judgment there had accrued, as of January 1, 1937, unpaid interest in the sum of $25,580.91; and

Whereas, as additional security for the payment of the amount evidenced by said judgment the said Sarah McGuire, at the time of her death, was also the owner and holder of a valid and subsisting mortgage on the following described property located in The City of Coral Gables, Dade County, Florida, to-wit:

The South Half (S½) of the Northwest Quarter (NW¼) of the Northwest Quarter (NW¼) of the Northeast Quarter (NE¼) of Section Eighteen (18), Township Fifty-four (54) South Range Forty-one (41) East, in Dade County, Florida; and

Whereas, pursuant to the provisions of the Will of said Sarah McGuire, deceased, title to said judgment and

mortgage has become vested in the following named persons and institutions in the following named proportions:

Name	Proportionate Interest	Undivided Interest in Principal of Judgment	Undivided Interest in Accrued Interest
Mary Alice Everling	45%	$32,384.48	$11,511.40
Elsie May Cornman	45%	32,384.48	11,511.40
The Board of Foreign Missions of the United Lutheran Church in America	5%	3,598.27	1,279.06
The Board of American Missions of the United Lutheran Church in America	5%	3,598.27	1,279.05
		$71,965.00	$25,580.91

And Whereas, The City of Coral Gables is financially involved and is unable to meet its obligations as they mature; and

Whereas, The City of Coral Gables and the greater portion of its creditors are desirous of effecting a plan for the refunding and composition of its debts, which plan is set forth in detail in Ordinance No. 269 of The City of Coral Gables, adopted December 23, 1936, as amended September 4, 1937 by Ordinance No. 289 (which said Ordinances are by express reference made a part hereof); and

Whereas, the Refunding Bonds—Issue of January 1, 1937 and the Tax Participation Certificates—Issue of January 1, 1937, more particularly described in the above mentioned Ordinances, were duly validated by decree of the Circuit Court of the Eleventh Judicial District, Dade County, Florida, on April 12, 1937, which decree was duly and unanimously affirmed by the Supreme Court of Florida on July 30, 1937; and

Whereas, Thomson, Wood & Hoffman, of New York City, did on September 11, 1937 issue their Opinion approving the legality of said Refunding Bonds and Tax Participation Certificates issued pursuant to the terms of said Ordinances; and

Whereas, certain of said Devisees, though unwilling to presently satisfy and cancel the above described judgment and mortgage, are willing to aid in the consummation of said plan of refunding and composition on the modified basis and subject to the specific terms and conditions hereinafter set forth;

Now, Therefore, in consideration of the premises, as well as other good and valuable considerations, the following agreement is entered into by and between the parties hereto as follows, to-wit:

First: by express agreement of the parties, the above described judgment and mortgage shall continue in full force and effect, subject only (a) to the provisions herein for partial payments thereon, and (b) adjustment in reduction of the statutory rate of interest to accrue thereon, as herein elsewhere provided.

Second: The exact proportionate division among the Devisees of the various cash payments and security distributions provided to be made hereunder, as well as the specific allocation of the Refunding Bonds and Tax Participation Certificates to be deposited in escrow with The Union Trust Company of Pittsburgh (as provided in Seventh below) are, for greater certainty, set forth in detail in the "Schedule of Division among Devisees" attached hereto and by express reference made a part hereto.

Third: For the purpose of reducing the principal amount of said judgment from $71,965.50 to the round figure amount of $70,000.00 (a sum readily divisible among the Devisees in multiples of $500.00), the City

agrees forthwith to pay and deliver to the Devisees, and the Devisees agree to accept, $1,065.50 in cash in full settlement for the credit of $1,965.50 hereby agreed to be applied on the principal of said judgment.

Fourth: The City agrees forthwith and unconditionally to deliver to the Devisees $25,580.91 in Tax Participation Certificates of The City of Coral Gables—Issue of January 1, 1937 in full settlement of unpaid interest which had accrued on the $71,965.50 judgment to January 1, 1937. In addition, the City agrees to immediately pay to the Devisees in cash, in full settlement of adjusted interest on said judgment for the six-month period from January 1, 1937 to July 1, 1937, the sum of $449.78 (being an amount equal to six months' interest at the rate of 2½% per annum on the $35,982.75 pro-rata share of its new Refunding Bonds which The City of Coral Gables has reserved and allocated for use as collateral for the liquidation of said judgment).

Fifth: In addition to the proportionate shares, to-wit, 5% each, of the cash and Tax Participation Certificates to be paid and delivered to the said two Church Boards under Sections Third and Fourth hereof, the City agrees forthwith to deliver to The Board of Foreign Missions of the United Lutheran Church in America $1,750.00 par value of Refunding Bonds of The City of Coral Gables—Issue of January 1, 1937, and $1,750.00 par value of Tax Participation Certificates of The City of Coral Gables—Issue of January 1, 1937, and forthwith to deliver a like amount of Bonds and Tax Participation Certificates to The Board of American Missions of the United Lutheran Church in America. Thereupon each of said Boards agree to execute and deliver appropriate papers evidencing payment in full of their respective 5% interests in said judgment and mortgage.

Sixth: The remaining unpaid balance of said judgment and mortgage, to-wit: $63,000.00, with interest from

July 1, 1937, shall be kept alive for the sole benefit of Mary Alice Everling and Elsie May Cornman, in equal shares, subject to the terms and conditions herein provided.

Seventh: In addition to the proportionate shares, to-wit: 45% each, of the cash and Tax Participation Certificates to be paid and delivered unconditionally to Mary Alice Everling and Elsie May Cornman under Sections Third and Fourth hereof, The City agrees forthwith to deliver to The Union Trust Company of Pittsburgh, as Escrow Agent, $31,500.00 par value of Refunding Bonds of The City of Coral Gables—Issue of January 1, 1937 and $31,500.00 par value of Tax Participation Certificates of The City of Coral Gables—Issue of January 1, 1937, to be delivered or otherwise disposed of for the benefit of Mary Alice Everling and Elsie May Cornman in accordance with the escrow directions and instructions set forth in the "Escrow Agreement" attached hereto and by express reference made a part hereof in all of its terms.

Eighth: Without in any way limiting the right of the said Devisees to withdraw Bonds from escrow, as provided in said "Escrow Agreement", the City agrees, so long as any Bonds remain in escrow, to purchase for cash at par plus accrued interest on July 1, 1938, $2,000.00 par value of any Refunding Bonds remaining in escrow, and to purchase for cash at par plus accrued interest on the first day of July in each year thereafter $2,000.00 par value of any Refunding Bonds remaining in escrow. Upon each such yearly purchase of $2,000.00 par value of Refunding Bonds, $2,000.00 par value of Tax Participation Certificates shall be released to Mary Alice Everling and Elsie May Cornman in equal shares. One-half of the proceeds of each such yearly purchase payment shall be promptly paid by the Escrow Agent to Mary Alice Everling and the remaining one-half to Elsie May Cornman.

Ninth: During the entire life of the escrow, the City agrees to pay all escrow fees and expenses and further agrees to pay yearly to the respective two Devisees, parties to said escrow, or to the Escrow Agent, a sum in cash which shall equal such personal property tax (not to exceed, however, eight mills) which may from year to year be levied by the State of Pennsylvania and/or any municipal subdivision thereof on that portion of the judgment which may from time to time remain unpaid and unsatisfied, and/or the Refunding Bonds and Tax Participation Certificates securing the same. Said sums shall be paid by the City upon fifteen days' written notice that the same are due and payable, and shall be in addition to all other sums provided to be paid by the City hereunder.

Tenth: So long as the City shall promptly carry out all of the terms and provisions set forth in this contract and the Escrow Agreement therein referred to, and shall not default in the payment of interest or principal on the Refunding Bonds deposited in escrow, or in the yearly payments required to be made on the Tax Participation Certificates under the terms of City Ordinance No. 269, as amended by Ordinance No. 289, Mary Alice Everling and Elsie May Cornman and each of them expressly covenant and agree that they will take no steps whatsoever, legal or otherwise, or permit any steps to be taken, to enforce either the mortgage described in the second "Whereas" clause or the collection of any unpaid portion of the Judgment entered July 9, 1930 In Common Law Suit #12,104 in the Circuit Court of Dade County, Florida, and they further covenant and agree to reduce and adjust the statutory rate of interest accrued or to accrue, subsequent to July 1, 1937, on the unpaid portion of said judgment to a yearly amount which shall equal the aggregate interest coupons maturing yearly on the Refunding Bonds—Issue of January 1, 1937 which from time to time shall remain in the escrow herein provided for. In the

event, however, that the City shall default in any of its covenants hereunder, or under said escrow agreement, or in the event of a default in the payment of principal of or interest on the Refunding Bonds, or in the yearly payments provided to be made on the Tax Participation Certificates, and said default shall continue after thirty days' written notice thereof, all restrictions on the enforcement of the above described mortgage and judgment and the collection of the legal rate of interest thereon shall terminate and be removed.

Eleventh: The City, during the life of the escrow herein provided for, expressly covenants and agrees to take all such steps and to execute any and all stipulations and papers which may be necessary or required under the Florida law from time to time to renew or keep alive that portion of the judgment which may remain unpaid.

Twelfth: When and as the Judgment hereinabove described has been liquidated in full in the manner herein provided the Devisees covenant and agree to execute any and all papers and releases necessary to satisfy of record both the Judgment and the mortgage above referred to.

Thirteenth: This agreement may be modified, amended or enlarged in any particular by mutual written agreement of the parties hereto, attached as a supplement. It is specifically agreed by the parties hereto that all the terms, covenants, stipulations and agreements contained herein, or in any supplement or amendment hereto, shall be binding upon and inure to the benefit of each of the parties hereto and to their respective heirs, executors, administrators, successors, and assigns.

In Witness Whereof, The respective parties hereto have executed this agreement in counterpart originals and have affixed their respective seals hereto as of the date first above written.

Signed, sealed and delivered in the presence of:

THE CITY OF CORAL GABLES,

By .....
Mayor.

(City Seal)

Attest:

.....
City Clerk.

.....

.....(Seal)
(Mary Alice Everling.)

.....

.....(Seal)
(Elsie May Cornman.)

.....

.....

THE BOARD OF FOREIGN MISSIONS OF THE UNITED LUTHERAN CHURCH IN AMERICA,

By .....(Seal)
Treasurer.

.....

.....

THE BOARD OF AMERICAN MISSIONS OF THE UNITED LUTHERAN CHURCH IN AMERICA,

By .....(Seal)
Treasurer.

.....

.....

"Schedule of Division Among Devisees."

	Mary Alice Everling (45% Interest)		Elsie May Cornman (45% Interest)		The Board of Foreign Missions of the United Lutheran Church in America (5% Interest)	The Board of American Missions of the United Lutheran Church in America (5% Interest)
Division of $1,965.50 Cash Payment on Principal of Judgment	$884.47		$884.47		$98.27	$98.28
Division of $449.78 Cash Payment of Interest on $35,982.75 Refunding Bonds 1/1/37-7/1/37	202.40		202.40		22.49	22.49
Total Immediate Cash Division		$1,086.87		$1,086.88	$ 120.76	$ 120.77
Division of $25,580.91 Tax Participation Certificates to be immediately delivered in settlement of interest to 1/1/37		11,511.41		11,511.40	1,279.05	1,279.05
Refunding Bonds to be immediately delivered		.....		.....	1,750.00	1,750.00
Tax Participation Certificates to be immediately delivered		.....		.....	1,750.00	1,750.00
Allocation of 31,500 Refunding Bonds deposited in escrow as collateral to $63,000 balance of Judgment		15,750.00		15,750.00	.....	.....
Allocation of $31,500 Tax Participation Certificates deposited in escrow as collateral to $63,000 balance of Judgment		15,750.00		15,750.00	.....	.....
Grand Totals		$44,098.28		$44,098.28	$4,899.81	$4,899.82

1718 "Escrow Agreement".

Supplemental Agreement and Terms of Escrow Entered into as of the 22nd day of November, A. D. 1937 by and between The City of Coral Gables, a Municipal Corporation created and existing under the laws of the State of Florida (hereinafter designated as the "City"), and Mary Alice Everling and Elsie May Cornman, as certain Devisees and beneficiaries under the Will of Sarah McGuire, deceased (hereinafter sometimes referred to as the "Devisees"), and The Union Trust Company of Pittsburgh, a banking corporation (hereinafter designated as the "Escrow Agent" or "Escrowee"), Witnesseth:

Whereas, the City and the Devisees have executed and delivered a certain "Memorandum of Agreement" dated as of the 22nd day of November, 1937, a copy of which marked "Exhibit One" is attached hereto and by express reference made a part hereof; and

Whereas, this agreement, primarily designed to set forth in detail the terms and provisions of the escrow therein provided for, constitutes a part of and is supplemental to said "Memorandum of Agreement";

Now Therefore, in consideration of the premises, and other good and valuable considerations, the following agreement and Escrow is entered into by and between the parties hereto, as follows, to-wit:

First: The City of Coral Gables, pursuant to due resolution of its City Commission, herewith delivers to The Union Trust Company of Pittsburgh, to be held in escrow hereunder, the following described Refunding Bonds of The City of Coral Gables—Issue of January 1, 1937 and Tax Participation Certificates of The City of Coral Gables —Issue of January 1, 1937.

Group No.	Allocated To	Principal Refunding Bonds	Numbers	Principal Tax Participation Certificates	Numbers
One	Mary Alice Everling	$15,750	D-8126 to D-8156 & ½ Int. in D-8157	$15,750	TPC-13,301/-13,331 ½ Int. TPC-13,369
Two	Elsie May Cornman	15,750	D-8158 to D-8188 & ½ Int. in D-8157	15,750	TPC-13,332/-13,362 & Int. TPC 13,369

all of which said Refunding Bonds and Registered Tax Participation Certificates are to be delivered and/or otherwise disposed of in accordance with the specific escrow directions and instructions herein contained.

Second: When and as coupons attached to the Refunding Bonds remaining in escrow from time to time mature, the Escrow Agent is authorized and instructed to clip and collect on said coupons and to promptly remit to the respective Devisees the proceeds from the coupons clipped from the respective bonds enumerated and designated in each of the groups detailed in Section First hereof.

The Escrow Agent is further instructed that the Tax Participation Certificates do not bear interest but that on or about August 1st of each year it will receive from the City, for the account of the respective Devisees, the payments in cash which are allocated to the deposited Tax Participation Certificates in accordance with the terms and provisions of Ordinance No. 269 as amended by Ordinance No. 289 of The City of Coral Gables. As such payments on the registered Tax Participation Certificates are distributed, the Escrow Agent is instructed to require delivery by the Devisees of receipts for the amount of such cash payments similar in form to those required under Section Third hereof, which receipt, when received, shall be promptly forwarded to the Director of Finance, City of Coral Gables, Florida.

Third: The Escrow Agent is further authorized and instructed, at any time and from time to time, upon written request of either Devisees, unconditionally to release from this escrow and deliver to said Devisee for sale or otherwise, but only in units consisting of one $500.00 Refunding Bond and one $500.00 Tax Participation Certificate or of one $250.00 Refunding Bond and one $250.00 Tax Participation Certificate, all of any part of the Refunding Bonds and Tax Participation Certificates allocated under the terms of Section First to the Devisee so requesting, provided that contemporaneously with the delivery thereof, said Devisee shall execute and deliver to the Escrow Agent for the account of and for delivery to the City, a receipt evidencing a payment on the principal of the judgment described in "Exhibit One" equal to the par amount of the Refunding Bonds and Tax Participation Certificates so released from escrow, less any credits theretofore allowed under the provisions of Section Second hereof on account of distributions theretofore made on the Tax Participation Certificates so released, said receipt to be worded in substantially the following language:

Receipt.

"This will acknowledge receipt this day from the City of Coral Gables of certain securities, which have been accepted as a payment on account in the sum of $..... on the principal of the $71,965.50 Judgment entered July 9, 1930 in the case of Sarah McGuire vs The City of Coral Gables, Common Law #12,104 in the Circuit Court of the Eleventh Judicial District in and for Dade County, Florida.

"The Clerk of the Circuit Court of the Eleventh Judicial District in and for Dade County, Florida, is hereby auth-

orized and directed to enter on his judgment records a notation of the payment of $..... on account on said above-mentioned Judgment.

.....

As the present owner of $..... interest in said Judgment and as Devisee and Beneficiary under the Will of Sarah McGuire, Deceased."

Fourth: The Escrow Agent is further instructed that on July 1, 1938 and on July 1st of each year thereafter the City has agreed to purchase at par plus accrued interest $2,000.00 par value of any Refunding Bonds remaining deposited hereunder. When and as each such yearly cash payment of $2,000.00 plus accrued interest is made, the Escrow Agent is specifically authorized and directed immediately to deliver to the City $2,000.00 par value of Refunding Bonds, charging $1,000.00 thereof to Group One and the remaining $1,000.00 to Group Two. Thereupon the Escrow Agent is authorized and directed to pay and deliver to Mary Alice Everling and Elsie May Cornman, in equal shares, said cash payment of $2,000.00 plus accrued interest and $2,000.00 in Tax Participation Certificates, upon delivery by them of a receipt or receipts therefor similar to that provided for in Section Third above. The Escrow Agent is then directed promptly to forward said receipts to the Director of Finance, Coral Gables, Florida.

Fifth: The Escrow Agent is authorized and instructed to permit the City at any time to take down from escrow or redeem:

(a) Any remaining Refunding Bonds deposited in escrow hereunder, upon the payment of the par amount thereof plus accrued interest to date of redemption;

(b) Any remaining Tax Participation Certificates, upon payment of the unpaid par amount thereof without interest.

In either event the Escrow Agent is directed to promptly pay all sums so received to the Devisees entitled thereto under the terms hereof, upon the execution of appropriate receipts therefor.

Sixth: Unless sooner terminated by mutual agreement, this escrow shall remain in full force and effect until all of the Refunding Bonds and Tax Participation Certificates deposited hereunder have been released from escrow under the provisions hereof.

Seventh: The fees of the Escrow Agent and those of the necessary agents and attorneys of the Escrow Agent, and all other costs, expenses and attorneys' fees incurred in connection with the carrying out of the terms of this escrow agreement shall be paid by the City.

Eighth: The Escrow Agent hereby acknowledges receipt of the following documents:

(a) Executed copy of the contract between The City of Coral Gables and Mary Alice Everling, Elsie May Cornman, The Board of Foreign Missions of the United Lutheran Church in America and the Board of America Missions of the United Lutheran Church in America, dated November 22, 1937;

(b) Certified copy of Resolution of the Commission of The City of Coral Gables authorizing the execution of said agreement and also of this Escrow Agreement;

(c) The Refunding Bonds of The City of Coral Gables—Issue of January 1, 1937 and Tax Participation

Certificates of The City of Coral Gables—Issue of January 1, 1937, more particularly described in Section First hereof;

(d) Photostatic copy of legal opinion of Thomson, Wood & Hoffman, approving the legality of the Refunding Bonds and Tax Participation Certificates above referred to.

(e) Certified copy of Ordinance No. 269 and Ordinance No. 289 of the City of Coral Gables.

Ninth: The Union Trust Company of Pittsburgh hereby agrees to act as Escrow Agent under and in accordance with the terms and conditions hereof and for the uses and purposes herein set forth, and to deliver or re-deliver, or otherwise dispose of, the assets which may come into its possession hereunder upon the happening of the various events and conditions herein set forth at length.

Tenth: The Union Trust Company of Pittsburgh, as Escrow Agent, shall in no case be liable for any error or other act to the prejudice of the parties hereto by any of its agents or employees, except for its own default or misfeasance, and further the said Escrow Agent is to act solely in the capacity of custodian of the securities and other property which it is hereby provided shall be deposited with it, and shall not be held for the exercise of any discretion or judgment with respect to the proper carrying out and/or performance of said Agreement.

In the event that a dispute shall arise between the parties with respect to the carrying out of this agreement, the Escrow Agent, if it shall deem the same necessary and proper, may employ counsel of its own selection to advise it with respect to its rights and duties in the premises at the cost of the City, and said Escrow Agent shall not be

liable for any act or acts it may perform in accordance with the advice of counsel so selected. The Escrow Agent shall not be responsible in any manner whatsoever for the recitals of facts herein contained; but such recitals shall be taken as statements made the other parties hereto alone and no title or right to any beneficial interest shall be deemed to have ben acquired from or through said Escrow Agent.

Eleventh: It is expressly agreed between the parties hereto that all the terms, stipulations and agreements herein contained shall be binding upon all the parties hereto and each and every of their respective heirs, executors, administrators, successors and assigns as the case may be.

In Witness Whereof, the respective parties hereto have duly executed this agreement in counterpart originals and have affixed their respective seals hereto as of the date first above written.

THE CITY OF CORAL GABLES,

By .....
Mayor.

(City Seal)

Attest:

.....
City Clerk.

Signed, sealed and delivered in the presence of:

.....(Seal)
(Mary Alice Everling.)

.....
.....

.....(Seal)
(Elsie May Cornman.)

.....
.....

THE UNION TRUST COMPANY OF PITTSBURGH,
(as Escrow Agent)

By .....
V. P.

Attest:

.....(Seal)
Assistant Secretary.

2. That the Mayor and the City Clerk be and they are hereby authorized and directed to execute in counterpart originals the said Memorandum of Agreement and said Escrow Agreement on behalf of The City of Coral Gables, and authorized and directed to deliver the executed contract and escrow agreement to Carl L. V. Exselsen, Special Attorney for The City of Coral Gables.

3. That the said Carl L. V. Exselsen, Special Attorney for The City of Coral Gables, be and he, hereby, is authorized, empowered and directed to take such further steps as may be necessary to comsummate and deliver the aforesaid Memorandum of Agreement and Escrow Agreement hereinabove accepted, approved and authorized to be executed.

1722 DEFENDANT'S EXHIBIT 21.

Filed March 26, 1941.

F. M. Hudson, Master.

City of Coral Gables, Florida.
February 24, 1940

City Commission.
Paul D. McGarry, Mayor.
P. J. O'Shaughnessy, Vice-Mayor.
W. Keith Phillips.
Hollis Rinehart, Jr.
Joe Whitley.

G. N. Shaw,
City Clerk,
Director of Finance.

Mr. Harrison Hopper,
29 3rd Street North,
St. Petersburg, Florida.

Dear Sir:

As the holder of bonds or tax participation certificates of the City of Coral Gables, we wish to report to you the present condition of the refunding, and to ask your support in bringing it to a final conclusion. You and others representing 94.18% of the City's obligations consented to the refunding, and exchanged your bonds for the new refunding securities. The holders of 1.84% of the obligations sued and reduced their claims to judgments while the refunding was in progress. The holders af the remaining 3.98% (326,000 of bonds) have not seen fit to cooperate, in fact, the holder of $252,000 of these bonds has announced his intention to attempt to recover full principal and accrued interest. In December, 1939, that creditor filed suit on approximately $95,000 of his interest coupons, attempting to secure payment out of money which had been levied and was being held for the payment of interest on the refund-

ing bonds, including yours. Fortunately, the suit was not filed sufficiently early to interfere with the interest payment on January 1, 1940.

The City Commission is not willing to grant to these few nonconsenting creditors a better settlement than that which you accepted. Negotations with these "hold-outs" having failed, to complete the refunding the City is compelled to avail itself of the Municipal Bankruptcy Act.

Municipal Bankruptcy proceedings can not and will not change the terms of the refunding bonds or tax participation certificates which you hold. The results will apply only to the unrefunded bonds. But, the proceedings will protect the payments on your securities, by making impossible excessive levies for the nonconsenting bonds. There is no doubt of the City's ability to meet the requirements of the refunding securities, unless such excessive taxes forced upon us by the unrefunded bonds adversely affect tax collections.

Since the Municipal Bankruptcy Act expires on June 30, 1940, all haste must be made in preparing and filing the petition, and to this end we ask that you immediately fill in, execute, and return in the pre-addressed postal permit envelope, the enclosed preliminary consent and statement upon which the City will prepare and send to you for execution the final consent, which will be necessary to enable the City to initiate and support the proceedings. This consent will not obligate you financially in any way, and is merely a ratification of your acceptance of the refunding plan. All expense of the proceedings will be borne by the City. If you have disposed of the refunding securities, please advise us to whom or through whom they were sold, in order that we contact the present holder.

Very truly yours,
THE CITY OF CORAL GABLES,
G. N. SHAW.

Enclosures:

1. Preliminary Consent and Data Form.

2. Instruction sheet.

3. Return envelope.

1723 EXHIBIT—Blank Form of Statement of City of Coral Gables Refunding Bonds and Tax Partification Certificates of the Issue of Jan. 1, 1937, etc., (Same as Exhibit #2, omitted from the printed record, being heretofore copied at page 259.

* * * * * * * * *

Instructions as to completion of accompanying "Statement of City of Coral Gables Refunding Bonds and Tax Participation Certificates of the issue of January 1, 1937".

In order that the consents and the data thereon may be uniformly prepared, the City is not sending you the final consent form at this time. From the information secured on the accompanying statement and preliminary consent, the City's forces will prepare final consent forms and send them to you for execution.

The enclosed statement has been organized so that you can report your present holdings in the easiest possible manner. The City has full data as to the securities originally issued to you, and as to the tax participation certificates now registered in your name. Please, therefore, show on the accompanying form the additions or deductions to be made from our records.

If you still hold all of the securities originally issued to you, simply write the word "yes" after Item 1 on the form.

If you have bought more bonds or tax participation certificates since the refunding, please show the numbers of the bond or certificates, and the total principal amount of each class in Item 2 of the form.

If you have sold all of the securities originally issued to you, simply write the word "All" after Item 3 of the form. If you have sold only a part, enter the numbers of the bonds or certificates sold, and the total principal amount of each in Item 3 of the form. In either case, please give the name and address of the purchaser, or of the broker through whom the transaction was handled.

Please insert the necessary information, and sign and return the form at once.

City of Coral Gables, Florida.

City Commission.
Paul D. McGarry, Mayor.
P. J. O'Shaughnessy, Vice-Mayor.
W. Keith Phillips.
Hollis Rinehart, Jr.
Joe Whitley.

G. N. Shaw,
City Clerk,
Director of Finance.

Dear Sir:

In accordance with your recent report of your holdings of the City of Coral Gables bonds and tax participation certificates of the issue of January 1, 1937, we have prepared the enclosed acceptance of the terms of adjustment and refunding embodied in these securities, and request that you sign it and have it witnessed as indicated, and return it at once in the enclosed postal permit envelope.

Promptly upon securing these acceptances from a sufficient percentage of our creditors, the City will file a petition in bankruptcy in the United States District Court in and for the Southern District of Florida, and request theren

that the court declare the plan established by Ordinance No. 269, as amended by Ordinance No. 289, upon which the above mentioned securities were issued, as being the established plan of composition of the obligations of The City of Coral Gables, in order that it may be enforced against and made applicable to the few creditors who have not yet refunded.

We do not believe it will be necessary for us to call upon you again for assistance in this matter, but if some unforseen condition should arise requiring further correspondence with you, we hope that you will respond as promptly as in this case, in order that the proceedings may be conducted with all possible dispatch. We wish to point out again that this action is being taken for the joint protection of the property owners of the City and of its creditors, including yourself.

We will report to you any important developments in the matter.

Very sincerely yours,
THE CITY OF CORAL GABLES.

Acceptance of plan for the composition of debts of the City of Coral Gables, Florida, and consent to filing a petition for said city under Acts of Congress relating to bankruptcy.

The undersigned creditor of The City of Coral Gables, Florida, being the owner and holder of Refunding Bonds of said City, listed below, dated January 1, 1937, maturing July 1, 1977, with July 1, 1940 and subsequent coupons attached, said bonds being outstanding as result of the partial completion or execution of the plan of composition evidenced by Ordinance No. 269, as amended by Ordinance No. 289 of the City Commission of The City of Coral Gables, Florida, adopted by the said City Commission on the 23rd day of December A. D. 1939, for the composition of the debts of the said City and pursuant to which

ordinance as amended said Refunding Bonds, hereinafter listed and owned and held by the undersigned, were issued; and the undersigned creditor being the owner and holder of Tax Participation Certificates were issued and outstanding as the result of the partial completion or execution of the aforesaid plan evidenced by the said ordinances, which said plan of composition was re-adopted by Ordinance No. 347 adopted on the 5th day of March, 1940 as a plan for the composition of the debts of the said City, hereby accepts and consents to the aforesaid plan of composition adopted by the said City by said Ordinance No. 269 amended as aforesaid and re-adopted by Ordinance No. 347 on the 5th day of March 1940, and to be presented by a petition to the United States District Court for the Southern District of Florida, for the completion of said plan for the composition of said debts under the aforesaid plan in accordance with Chapter IX of the Acts of Congress relating to bankruptcy, as amended by Acts of Congress approved June 22, 1939.

Dated this ..... day of ..... 1940.

Witnesses:

..... Creditor .....

..... Address .....

Series—Bond Numbers—Aggregate Par Amount.

Series—Tax Participation Certificate Numbers—Aggregate Par Amount.

April 4, 1940.

To the holders of Refunding Bonds and Tax Participation Certificates of the City of Coral Gables:

As former members of the Coral Gables, Florida, Bondholders Protective Committee, the activities of which

ceased with the completion of the readjustment of the City's indebtedness in 1937, the undersigned are greatly interested in the efforts to defend the City against suits brought or threatened by a small minority of creditors who have declined to accept the Refunding bonds and Tax Participation Certificates in settlement of their claims and are seeking or may seek special levies to pay their claims in full.

In our opinion, the terms of the January 1, 1937 Refunding Plan represent a fair and equitable settlement and the City has amply demonstrated its good faith toward its creditors in its acceptance of that plan and by the manner in which it has performed its part of the agreement since the Plan became effective.

While we do not own any Coral Gables securities and do not at this time represent creditors of the City, it would seem to us that the City is fully justified in now appealing to the Federal Courts, under the provisions of the Municipal Bankruptcy Act, for the purpose of compelling the few non-assenting creditors to accept the same settlement to which the great majority of creditors voluntarily assented. Certainly, holders of Refunding Bonds and Tax Participation Certificates, for the protection of their own interest in Coral Gables securities, should assist the City in this matter by assenting promptly to the filing of the proposed petition in bankruptcy.

EDWIN H. BARKER.
SANDERS SHANKS, Jr.
PRENTISS de V. ROSS.

The above is a copy of a statement submitted to and in the files of the City, with authority to reproduce and distribute.

THE CITY OF CORAL GABLES.

City of Coral Gables, Florida.

July 1, 1940.

City Commission.
Paul D. McGarry, Mayor.
P. J. O'Shaughnessy, Vice-Mayor.
W. Keith Phillips.
Hollis Rinehart, Jr.
Joe Whitley.

G. N. Shaw,
City Clerk,
Director of Finance.

We are pleased to advise that on June 27 the City filed the petition to the United States District Court, under the so-called "Municipal Bankruptcy Act," for the purpose of effecting a composition of its debts. The petition proposes as the Plan of Composition the terms of the settlement accepted by those who have already exchanged their old securities for the Refunding Bonds and Tax Participation Certificates of the Issue of January 1, 1937. The petition was accompanied by the written consents of 69.7% of the City's debts.

The Court has ordered that notice of the proceedings be issued, and that Proofs of Claim be filed. Within a few days you will receive this notice and a form for the Proof of Claim to be filed in the Court, which form will also contain a statement of your consent to the use of the terms of the present Refunding Bonds and Tax Participation Certificates as the Plan of Composition. We have not previously received such a consent from you, and if for any reason you hesitate to commit yourself on this point, it will be proper for you to strike out that particular paragraph of the form. We urge, however, that you leave in that portion of the form and join the approximately 70% of creditors who have already assented to the proceedings.

To simplify this matter for you, this office is placing upon the Proof of Claim form the numbers and value of the Refunding Bonds and/or Tax Participation Certificates shown on our records as now in your name, or as having been issued to you. If you have purchased additional securities, please add their numbers and amount to the form. If you have sold any of the securities listed, please delete their numbers and amount and advise us to whom sold, so that proper notice can be given to the present owners.

It is essential that you execute the form before a notary as indicated thereon and return it immediately, as the Court has set a day by which these Proofs of Claim must be filed.

We wish to assure you that these proceedings are being taken in an effort to complete the refunding already accepted by 94.1% of our creditors (by value), and that the result of success in this action can only be to strenghten the position and value of the refunding securities which you own. We hope that we may receive your prompt cooperation in this effort.

Very sincerely yours,
THE CITY OF CORAL GABLES,
G. N. SHAW,
Director of Finance.

City of Coral Gables, Florida.

City Commission.
Paul D. McGarry, Mayor.
P. J. O'Shaughnessy, Vice-Mayor.
Wallace A. Bell.
W. Keith Phillips.
Joe Whitley.

G. N. Shaw,
City Clerk,
Director of Finance.

As the holder of bonds or tax participation certificates of the City of Coral Gables, we wish to report to you the present condition of the refunding, and to ask your support in bringing it to a final conclusion. You and others representing 94.18% of the City's obligations consented to the refunding, and exchanged your bonds for the new refunding securities, or, perhaps, have subsequently purchased refunding securities so exchanged. The holders of 1.84% of the obligations sued and reduced their claims to judgments while the refunding was in progress. The holders of the remaining 3.98% ($326,000 of bonds) have not seen fit to cooperate; in fact, the holder of $252,000 of these bonds announced his intention to attempt to recover full principal and accrued interest. In December, 1939, that creditor filed suit on approximately $95,000 of his interest coupons, attempting to secure payment out of money which had been levied and was being held for the payment of interest on the refunding bonds, including yours. Fortunately, the suit was not filed sufficiently early to interfere with the interest payment on January 1, 1940.

The City Commission is not willing to grant to these few non-consenting creditors a better settlement than that which you accepted. Negotiations with these "holdouts" having failed, to complete the refunding the City was compelled to avail itself of the Municipal Bankruptcy Act.

Municipal Bankruptcy proceedings Can Not and Will Not change the terms of the refunding bonds or tax participation certificates which you hold. The results will apply Only To The Unrefunded Bonds. But, the proceedings will protect the payments on your securities, by making impossible excessive levies for the non-consenting bonds. Their is no doubt of the City's ability to meet the requirements of the refunding securities, unless such excessive taxes, forced upon us by the unrefunded bonds, adversely affect tax collections.

On June 27, the City filed its petition in United States District Court for the Southern District of Florida, setting fourth in the petition as the requested Plan of Composition the terms for the service and payment of the Refunding Bonds and Tax Participation Certificates of January 1, 1937. The petition was supported by the preliminary consents of more than 66-2/3% of the City's creditors, by value. The Court accepted the petition, granted an injunction staying present litigation and forbidding further litigation pending the outcome of the proceedings, and ordered notice to all creditors and the filing by them of sworn Proofs of Claim.

We enclose, herewith, the formal notice of the suit and three copies of a form for the filing of Proof of Claim and Consent to the use of the refunding terms as the Plan of Composition. The forms should be completely filled in, particularly those blanks referring to the numbers of the refunding securities and their par value, and should be executed before a notary. Two copies are to be returned to this office, the third copy being intended for your files.

This consent does not obligate you financially in any way and is merely a ratification of your acceptance of the refunding plan. All expenses of the proceeding will be borne by the City.

We solicit your prompt cooperation in the filing of this form, as a means of safeguarding the refunding securities which you hold.

Very sincerely yours,
THE CITY OF CORAL GABLES,
G. N. SHAW,
Director of Finance.

GNS/iw
Enclosures.

Memorandum to accompany notice of filing of petition to effect a plan of composition of the debts of the City of Coral Gables, and proof of claim form.

The enclosed Proof of Claim has been prepared to cover the Refunding Bonds and/or Tax Participation Certificates shown on the City's records as owned by you, or as having been issued to you. We are required to notify you as the owner last known to us, whether or not you now own the securities.

If you own other Refunding Bonds or Tax Participation Certificates, please add to the form the numbers and the aggregate original amount of the additional securities, following the same style as for those already appearing upon it.

If you have sold or transferred any of the Refunding Bonds or Tax Participation Certificates shown on the form, please strike out the numbers, and subtract from the amount the original principal amount of those sold. In such case, please give us all information possible as to the sale, in order that notice may be sent to the present owner. A form for entering such information appears at the bottom of this sheet.

One paragraph of the enclosed form consists of a statement of your consent to the use of the terms and conditions of the Refunding Bonds and Tax Participation Certificates of the Issue of January 1, 1937 as the plan of composition of the debts of The City of Coral Gables. If, for any reason, you are not prepared to sign such a consent at this time, simply strike out that paragraph and File The Proof Of Claim. The proof of claim must be filed within the specified time; your consent may be filed later. If you have furnished a preliminary consent to the

City, your execution of the form as to this paragraph is simply a reaffirmation of the previous consent.

Three copies of the Proof of Claim and Consent are inclosed. Two are to be filled in and executed before a Notary. A pre-addressed envelope is inclosed for the return of the original and duplicate, when executed. If you wish, you may forward the original direct to the Clerk, United States District Court, Miami, Florida. If both original and duplicate are returned to this office, the City Attorney will file the original in Court for you. The third copy is sent you for your files.

It is imperative that this form be executed and returned promptly, as a time limit has been set by the Court for the filing of these proofs of claim.

THE CITY OF CORAL GABLES.

Information as to securities sold:

Refunding Bonds, Numbers:
Amount $.....

Tax Participation Certificates, Numbers:
Amount $.....

Sold to, or through .....
.....

Approximate date of sale .....

Notice to Creditors of Coral Gables, Florida.

In the United States District Court in and for the Southern District of Florida, Miami Division.

In Bankruptcy. No. 1867-M.

In the Matter of:
The City of Coral Gables, Florida.

Notice to Creditors of The City of Coral Gables, Florida.

You and Each of You Are Hereby Notified:

That the above named petitioners, The City of Coral Gables, Florida, did on the 27 day of June, A. D. 1940 file in the above entitled Court in the above entitled proceedings, its petition for the composition of its indebtedness evidenced by outstanding bonds and interest coupons appertaining thereto and outstanding judgments and interest thereon.

You are Further Notified that on the 27 day of June, A. D. 1940, by order entered in said cause, said petition of The City of Coral Gables, Florida, was approved as properly filed under Chapter Nine, Acts of Congress relating to Bankruptcy, as Amended, and it was adjudicated that the said petition had been filed in good faith, and that said order so entered did further direct that all claims and interests of creditors of petitioner to be affected by said plan of composition, must be filed or evidenced herein by the filing of proofs of claims for such claims or interests by creditors within sixty (60) days subsequent to the entry of said order.

That said proofs of claims and interests shall be filed with the Clerk of this Court and shall be entitled in this cause and shall consist of statements in writing filed and verified by the creditors, or their duly authorized agents

or attorneys or representatives, setting forth the name of the bond issues, serial numbers and denominations of all bonds and matured unpaid coupons upon which the claim is based, upon a judgment procured in a suit upon such bonds and/or coupons, such proof of claim shall set forth the date of such judgment, the Court in which the same was rendered, the title and number of the case, the name of the bond issues, serial numbers and denominations of the bonds and/or coupons upon which the judgment was rendered, and the amount of the judgment, showing what part thereof consists of coupons, interest on coupons to the date of judgment, principal of bonds, interest on bonds to date of judgment, and interest on judgment since the date thereof, and Court costs; that bonds and/or coupons, upon which proofs of claims are filed, need not be presented or filed with said proofs of claims, provided, however, that such bonds and/or coupons must be produced by the claimant thereof if so ordered and the Court shall deem it necessary and advisable to require the production of the same, and in case the plan of composition be confirmed, said bonds and/or coupons must be produced and deposited in accordance with the terms of the plan of composition or the further order of this Court in order to entitle the claimant thereof to participate in the plan of composition.

That proofs of claims and interests duly approved and filed in accordance with the provisions of this order shall be deemed to have been allowed, subject, however, to objections by any party in interest, and reconsideration of said allowance of said claim may be had upon due notice and hearing in such manner as this Court may hereafter determine.

That a hearing in the above entitled cause be held on the 21 day of Sept., A. D. 1940, at 10 o'clock A. M. in the

United States District Court Room, at Miami, Dade County, Florida, for the purpose of considering said petition and all answers which may be filed controverting any of the material allegations thereof, and for the purpose of considering the plan of composition as referred to and set forth in said petition and any objections of creditors of the said The City of Coral Gables, Florida; and in case the material allegations in said petition are sustained, for the further purpose of classifying all creditors of said petitioner according to their respective claims and interests, and for all other acts and purposes necessary to the confirmation of said plan of composition and the carrying out of this proceeding.

Dated: Miami, Florida, June 27, 1940.

THE CITY OF CORAL GABLES, FLORIDA.
By PAUL D. McGARRY,
Mayor, Petitioner.

G. N. SHAW,
Clerk.

In the United States District Court in and for the Southern District of Florida, Miami Division.

In the Matter of:
The City of Coral Gables, Florida.

No. 1867-M, In Bankruptcy.

In Proceedings for Composition of Debts under Sections 81, 82, 83 and 84 of Chapter IX, of the Acts of Congress Relating to Bankruptcy.

Proof of Claim and Consent.

1. At ..... in the County of ..... State of ..... on the ..... day of ....., A. D. 1940, came ..... and made oath and said:

2. I am the claimant herein, and the facts stated herein are true:

3. The City of Coral Gables, Florida, is justly indebted to the claimant as the owner and holder of the following Refunding Bonds and Tax Participation Certificates issued by The City of Coral Gables, Florida:

Refunding Bonds of the Issue of January 1, 1937, First Series.

Numbers	Aggregate Principal Amount

Tax Participation Certificates of the Issue of January 1, 1937, First Series.

Numbers	Aggregate Original Principal Amount

4. Claimant hereby approves and accepts as the Plan of Composition of the indebtedness of The City of Coral Gables, Florida, the terms and conditions of the Refunding Bonds and Tax Participation Certificates of the Issues of January 1, 1937, as set forth in Ordinance No. 269 and Ordinance No. 289, which latter Ordinance relates solely to Second Series Bonds with number prefix "SB" and Second Series Tax Participation Certificates with number "SC," and Ordinance No. 347 readopting said Ordinances as a Plan of Composition, which Ordinances, we are advised, are incorporated in and the basis of the petition heretofore filed by The City of Coral Gables in the above named cause.

..... (Seal)
Individual Claimant.

Acknowledged and subscribed and sworn to before me this ..... day of ..... A. D. 1940

by the person executing the above Proof of Claim, who is personally known to this officer.

....., Notary Public in and for

(Notarial Seal) .....

My commission expires: .....

City of Coral Gables, Florida.

City Commission
Paul D. McGarry, Mayor
P. J. O'Shaughnessy, Vice-Mayor
Wallace A. Bell
W. Keith Phillips
Joe Whitley

G. N. Shaw, City Clerk
Director of Finance.

July 29, 1940.

To the Holders of Tax Participation Certificates:

The enclosed check for dividends on your Tax Participation Certificates is for a slightly lower percentage than the dividend of 1939. This is due to the fact that interest upon the refunding bonds increased this year from 2½% to 3% per annum, but the levy to support the refunding issues remainder, under the terms of the refunding agreement, at 6 mills. Consequently, after paying from the collections under this required levy the greater amount for refunding bond interest, a surplus smaller than that of last year remained for distribution to the Tax Participation Certificates. The millage and interest rate remain the same next year, and the increased value by new building should increase the collections for the refunding issues,

and should produce next year a larger dividend upon the Tax Participation Certificates than any previous one.

We point this out to prevent any misunderstanding of the decline in the Tax Participation Certificate dividend rate. The City has observed, and is carefully observing, the terms of the refunding agreement.

You, as the owner of Tax Participation Certificates, are vitally concerned in the City's petition to the Federal Court to require the less than six percent of non-consenting creditors to accept the plan under which the Refunding Bonds and Tax Participation Certificates were issued. The dividend rate upon your certificates is determined by the surplus remaining each year from the collections of a levy at a fixed tax rate. Any shrinkage in the collectibility of taxes will immediately reduce this surplus. Until and unless the Federal Court requires these non-consenting bondholders to accept the plan they are in position to sue the City upon their old bonds and interest coupons and require special levies for their payment in full. Our tax rate is now at or near the maximum, and additional taxes will unquestionably reduce the collectibility of taxes on vacant lands, if not on buildings.

We wish to express our appreciation for your cooperation in our effort to complete the refunding, and the promptness with which you met our request for the filing of consents in the Federal Court proceedings.

Very sincerely yours,
THE CITY OF CORAL GABLES,
G. N. SHAW,
Director of Finance.

GNS:MWA

City of Coral Gables, Florida.

City Commission:
Paul D. McGarry, Mayor,
P. J. O'Shaughnessy, Vice-Mayor,
Wallace A. Bell,
W. Keith Phillips,
Joe Whitley.

G. N. Shaw,
Director of Finance.

August 26, 1940.

To the Holders of Refunding Bonds and Tax Participation Certificates:

As the owner of our refunding securities, you will be interested in the enclosed statements showing the results of the operations under the refunding plan for the past three years, and the estimated operations for the year in progress. The bold-face figures, representing the actual results and the budget figures for the current year, are almost uniformly better than the light-face figures, which are drawn from the estimates made and published in 1936, just prior to the adoption of the refunding plan.

Certain agencies opposing our effort to complete the refunding, for their own selfish interests and without concern for the detriment to the City and its refunding security owners, have circulated the rumor that the City has not lived up to the refunding agreement, and has withheld or prevented the accrual of funds due the tax participation certificates. The enclosed statements clearly show the falsity of this rumor. Through the three years of operation since the refunding the cash payments to the certificates have exceeded the preliminary forecast by $10,095.50,

and, in addition, the delinquent taxes held for collection for the certificates exceed those of the forecast by $11,977.56. The $79,104.58 predicted for the certificates in these three years has grown to $103,812.11.

You will be interested to know that we have received from refunding bond and tax participation certificate owners representing more than 66-2/3% of our debts their proofs of claim and consents in our Federal Court action endeavoring to enforce the terms of the refunding upon the very small group of hold-outs. These consents are still coming in, and we believe that soon all of the refunded debt will be co-operating with us in the case.

We will keep you advised of any important developments, and solicit your inquiries as to any particulars of our operations which are not clear to you.

Very sincerely yours,
THE CITY OF CORAL GABLES,
G. N. SHAW.

The City of Coral Gables, Florida.

Operations of Issues of 1-1-37 Fund, 7-1-37 to 6-30-40 and Estimated for Year 19040-41.

Bold-face figures are actual; light-face figures are from forecast issued during refunding.

Section A—	Actual 7-1-37 to 6-30-38	Actual 7-1-38 to 6-30-39	Actual 7-1-39 to 6-30-40	Estimated 7-1-40 to 6-30-41
1. Assessments:				
	$16,114,232	$16,678,230	$17,261,968	$17,866,136
a. Buildings	**$16,377,142**	**$17,881,349**	**$16,938,625**	**$18,145,251**
	750,000	776,250	803,418	831,537
b. Personal Property	**795,676**	**877,023**	**867,584**	**941,689**
	5,500,000	5,500,000	5,500,000	5,500,000
c. Land	**6,511,200**	**6,396,934**	**6,263,668**	**6,053,408**
	$22,364,232	$22,954,480	$23,565,386	$24,197,673
d. Total	**$23,684,018**	**$25,155,307**	**$24,069,877**	**$25,140,248**
	6	6	6	6
2. Millage	**5.78 & .12**	**5.78 & .1503**	**5.82 & .08**	**5.77 & .0566***
	134,185.39	137,726.88	141,392.31	145,186.03

3. Debt Service Taxes	**$139,193.30**	**$149,178.51**	**$141,554.12**	**$145,842.80.**
4. Outstanding Bond and Bonds	4,200,000.00	4,200,000.00	4,140,000.00	4,080,000.00
held for Future Exchange...	**$4,121,536.95**	**$4,076,039.20**	**$4,028,300.37**	**$3,977,290.37**
	2½	2½	3	3
5. Interest Rate	2½	2½	3	3
	$105,000.00	$105,000.00	$124,200.00	$122,400.00
6. Interest Paid or Reserved....	**$103,038.40**	**$101,900.98**	**$120,848.72**	**$119,318.71**
7. Overage Allocated to "Certifi-	$29,185.39	$32,726.88	$17,192.31	$22,786.03
cates"	**$36,154.90**	**$47,277.53**	**$20,705.40**	**$26,524.09**

1595

* First millage is that in all value for "First Series" Refunding securities.
Second millage is that on Non-homestead exempt value for "Second Series" Refunding Securities.

See Comments on Back Page.

The City of Coral Gables, Florida.

Operations of Issue of 1-1-37 Fund, 7-1-37 to 6-30-40 and Estimated for Year 1940-41.

Bold-face figures are actual; light-face figures are projected from forecast issued during refunding, using same factors of delinquency as in actual experience, and using experienced amounts for subsequent collection of delinquent taxes. Reversal of type style indicates deficit.

	Actual			Estimated
	7-1-37 to 6-30-38	7-1-38 to 6-30-39	7-1-39 to 6-30-40	7-1-40 to 6-30-41
Section B—				
	$116,860.39	$120,062.50	$123,687.18	$127,438.72
1. Collections within fiscal year	**$108,333.87**	**$123,227.92**	**$121,669.76**	**$127,097.19**
	105,000.00	105,000.00	124,200.00	122,400.00
2. Interest Paid or Reserved	**103,038.40**	**101,900.98**	**120,848.72**	**119,318.71**
	11,860.39	15,062.50	**512.82D**	5,038.72
3. Balance paid to "Certificates"	**5,295.47**	**21,326.94**	**821.04**	**7,778.48**
4. Collections of Delinquent 1-1-37 Taxes	0	$ 574.76	$14,245.14	$10,000.00
within Fiscal Year	**0**	**9,757.30**	**$14,245.14**	**$10,000.00**

5. Bank Fees Paid	120.22			
	$11,860.39	$15,637.26	$13,732.32	$15,038.72
6. Total Paid to "Certificates"	**$14,357.79**	**$21,867.09**	**$15,100.59**	**$17,778.68**
7. Balance or Deficit in Fund at End of	0	0	0	0
Period	9,182.54[D]	**34.61**	**.20**	**0**
8. Tax Sale Certificates and Delinquent				
Taxes on Hand at End of Period, Pay-	$18,191.25	$36,164.49	$40,509.08	$49,143.76
able to "Certificates" when Collected..	**$28,350.58**	**$45,610.79**	**$52,486.64**	**$62,169.53**
9. Total Paid and Accrued Benefits to "Cer-	$30,051.64	$63,661.74	$81,739.05	$105,412.45
tificates" to End of Period	**$42,708.37**	**$81,835.67**	**$103,812.11**	**$131,273.68**

[D]—Deficit.

See Comments on Back Page.

Explanatory Comments: Section "A".

Item 1A, Year 1939-40: Reduction of actual improved property value this year is result of re-assessment to bring rolls more closely in line with market.

Item 1C, All years: Decline of actual total vacant land values largely due to use of land for new building and transfer of corresponding value to assessments in Item 1A.

Item 2, All years: The "First Series" millage, originally set at 6, was reduced by the Court in the validation proceedings to 5.88, in connection with the separation of some of the other-than-bond debts into a special class, and the provision for their separate service. The millage for these "Second Series" refunding securities is so calculated as to put them on a parity, as to payments, with the "First Series" securities, although the taxes for the "Second Series" are not chargeable against homestead-exempt property. The "First Series" millage has been further reduced .11 mills, representing that portion of the debt which has been reduced to judgment and is being supported by other levies.

Item 3, All years: Tax levies will not reconcile directly will millages and assessed values, due to the fact that millage for second series is applied to only a portion of the assessed value.

Item 4, All years: Reduced amounts of bonds outstanding or held for exchange are due to cancellation by City of bonds purchased with delinquent tax proceeds in accordance with agreement.

Explanatory Comments: Section "B".

Item 1, All years: For the light face figures relating to the forecast, the same factors of collectibility within the

fiscal year have been used for the vacant and personal property in the estimated figures as has been experienced in our operation.

Item 2, All years: Interest is paid to all refunding bonds issued, and reserved for refunding bonds still held for future exchanges for original debts still outstanding.

Item 4, All years: Collection figures include interest on delinquent taxes.

Item 4, Year 1937-38: The first levy for the refunding securities was that for 1937, consequently no delinquent taxes existed for collection during the year 1937-38.

Item 4, Year 1938-39; and Item 7, Year 1937-38: The actual delinquent tax collections this year include the regular annual tax sale for 1937 taxes, which was delayed beyond the end of the fiscal year. To permit the known but unrealized results of this sale to be paid to the Tax Participation Certificates, operating funds were temporarily advanced. This also explains the deficit in Item 7 in the previous year.

Item 4, Year 1940-41: In both instances, the $10,000 shown for delinquent taxes this year is an arbitrary guess, collection of delinquent taxes being unpredictable.

Item 5, Year 1937-38: An error, just discovered, which is being reimbursed to the Tax Participation Certificate Fund this year.

Item 7, Year 1937-38: This deficit explained above in conjunction with Item 4, year 1938-39.

Item 8, All years: These figures are cumulative, and

in each case consist of the balance from the previous year, less redemptions, and plus the new delinquencies for the year in which they appear, plus the penalties on those new delinquencies, but with none of the interest accrued on the delinquencies.

Item 8, Year 1937-38: The actual item of $28,350.58 will not reconcile with the levy, $139,193.30, and the collections of $108,333.87. The difference is represented by the statutory discounts for early payment of taxes. In the later years, these discounts have been charged against a special budget provision for them, eliminating them from the refunding security accounts.

Item 9, All years: These figures also are cumulative, and in each case consist of the total cash paid to the Certificates through the period in which they appear, plus the delinquent taxes held for the Certificates at the end of that period. These delinquent taxes include the addition of penalties at tax sale as in Item 8, but without the accrued interest.

City of Coral Gables, Florida.

City Commission:
Paul D. McGarry, Mayor,
P. J. O'Shaughnessy, Vice-Mayor,
W. Keith Phillips,
Hollis Rinehart, Jr.,
Joe Whitley.

Three forms have been prepared for the filing of Proofs of Claim: those for

Corporations
Agents
Individuals

Securities held in trust should be reported on the agency form. Partnerships, companies not incorporated, and individual holdings should be reported on the individual form. The style of signature and wording of the form indicates its type.

We have included the form which we think is applicable to the securities you hold, but if this is not the proper form will you please check above the type needed and return this memo to us and we will immediately send you the type requested.

Very sincerely yours,
THE CITY OF CORAL GABLES.

August 27, 1940.

City of Coral Gables, Florida.

City Commission:
Paul D. McGarry, Mayor,
P. J. O'Shaughnessy, Vice-Mayor,
W. Keith Phillips,
Hollis Rinehart, Jr.,
Joe Whitley.

G. N. Shaw,
City Clerk,
Director of Finance.

Dear

We have not yet received the final "Acceptance" form sent you for execution after the filing of your preliminary statement and consent, and with the thought that it may have become lost or mislaid, we are enclosing a duplicate.

Please execute this and return it at once, if you have not already sent in the original before receiving this letter. Enough of the preliminary consents have been received to assure the support of the proceedings, but the final Acceptances, like the enclosed, are necessary for filing in Court. Since the Municipal Bankruptcy Act expires on June 30th of this year, we must get all of our Acceptances and other material in hand in the very near future.

You will no doubt be interested in the enclosed statement by the members of the former Bondholders Protective Committee which represented a majority of our creditors during the period of our default. We have been authorized by them to quote the statement to you.

With thanks for your cooperation,

Very sincerely yours,

THE CITY OF CORAL GABLES.

1739 DEFENDANTS' EXHIBIT 22.

Ordinance No. 293.

An Ordinance providing for the levy of taxes for the year beginning July 1, 1937, and ending June 30, 1938; fixing the rate of such taxes for the purpose of paying service of debt and meeting operating requirements: and providing for the segregation and application of the proceeds from the several levies.

Be It Ordained by the Commission of the City of Coral Gables, Florida:

Section. That for the purpose of providing necessary funds to pay the appropriations for the current expenses of The City and for the payment of service of the principal

and/or interest of the bonded and other debts of The City of Coral Gables and paying other appropriations by the City Commission, there shall be levied upon the real and personal property in The City of Coral Gables assessed for taxes for the year 1937:

a. Upon all property within the present corporate limits of The City of Coral Gables, Florida, which was subject to taxation under the Constitution and Laws of the State of Florida in effect prior to November 6, 1934, a tax of 5.78 mills upon the dollar, which tax shall be levied solely and expressly for the purpose of procuring funds for the payment of service of the principal and/or interest of the bonded and other indebtedness of The City of Coral Gables, exclusive of indebtedness herein elsewhere specifically provided for.

b. Upon all property within the corporate limits of The City of Coral Gables, Florida, which was subject to taxation under the Constitution and Laws of the State of Florida in effect prior to November 6, 1934, a tax of 2.68 mills on the dollar, which tax shall be levied solely and expressly for the purpose of procuring funds for the payment, in compliance with peremptory writs of mandamus issued by the United States District Court, of the following judgments.

1. W. J. Noel Judgment, .2287 mills on the dollar.

2. Two Leo K. Steiner judgments, .2976 mills on the dollar.

3. Augustus T. Ashton Judgment, .1515 mills on the dollar.

4. Fiduciary Counsel, Inc., Judgment, 1.4184 mills on the dollar.

5. Henry A. Thies Judgment, .5838 mills on the dollar.

c. Upon all property within the present corporate limits of the City of Coral Gables, Florida, not exempted under the Constitution and Laws of the State of Florida as now written, a tax of .12 mills upon the dollar, which tax shall be levied solely and expressly for the purpose of procuring funds for the payment of service of the principal and/or interest of the Refunding Bonds, Second Series, of the Issue of January 1, 1937, and other indebtedness authorized to be refunded by Ordinance No. 289.

d. Upon all property subject to taxation under the Constitution and Laws of the State of Florida as now written, lying in sections 5, 7, 8, 17, 18, 19, 20 and in Section 28 except in the South 231 feet thereof, and in Section 29, except in the South 231 feet thereof, East of County Road (old Miami-Homestead Highway) in Section 30 and in Section 32 to Westward of a line as follows: Begin at Cocoplum Plaza at the Northwest corner of Lot 1, Block 1, Biscayne Bay Section Part One, thence southeastwardly along the south shore line of the Coral Gables Waterway to the eastern line of Lot 12 of said Block 1, thence southwardly and southeastwardly along the eastern and northwestern boundaries of said Lot 12, Block 1 and of Black 4 of said section to the northeastern corner of Lot 64 of said Block 4, then southwestwardly along the southeastern boundary of said Lot 64 and the extension thereof to the center line of Granada Boulevard thence northwestwardly along the center line of Granada Blvd. to its intersection with the center line of Cartegena Street, thence southwestwardly along the center line of Cartegena Street to its intersection with the south line of Section 32, all in Township 54 South, Range 41 East, a tax of (16) mills upon the dollar, which tax shall be levied

solely and expressly for the payment of the operating requirements of the City, and all appropriations by the City Commission other than for the service of debts.

Section 2. That all proceeds and collections of the 5.78 mill levy ordered and made by Section 1-a hereof shall be paid upon receipt into a fund to be known as "Interest and Sinking Fund" and shall be reserved therein solely and for the purpose of making payments upon the principal and/or interest of the bonded and other debts of the City, except those judgments, bonds and other debts for which other specific levies are made by this Ordinance, and shall be disbursed therefrom only for that purpose; provided, however, that there shall be paid daily into a fund to be known as "Issue of January 1, 1937 Fund" that proportion of the receipts under the levy provided for by Section 1-a hereof, representing the proportion which the amount of the Refunding Bonds and Tax Participation Certificates of the Issue of January 1, 1937, actually issued and exchanged bears to the total amount of such securities authorized to be issued by Ordinance No. 269 as amended by Ordinance No. 289.

Section 3. That all proceeds of the levy ordered by Section 1-b hereof shall be deposited daily in a special account to be known as the "Mandatory Levy Account" and reserved therein solely for the purpose of making payments in compliance with peremptory writs issued upon the several judgments listed in Section 1-b.

Section 4. The levy ordered by Section 1-c hereof shall be deposited daily in an account to be known as "Interest and Sinking Fund Second Series" fund, and reserved therein solely for the purpose of making payments upon the principal and/or interest of the Second Series Refunding Bonds of the issue of January 1, 1937, and other

debts proposed to be refunded under Ordinance No. 289, and shall be disbursed therefrom only for that purpose; provided, however, that there shall be paid daily into a fund to be known as "Issue of January 1, 1937, Fund, Second Series" that proportion of the receipts under the levy provided for by Section 1-c hereof, representing the proportion which the amount of the Second Series Refunding Bonds of the Issue of January 1, 1937, actually issued and exchanged bears to the total amount of such securities authorized to be issued by Ordinance No. 289.

Section 5. That the proceeds and collections of the 16 mill levy ordered and made by Section 1-d hereof shall be paid upon receipt into a fund to be known as the "Current Operating Fund" and shall be reserved therein until necessary and proper to be disbursed therefrom for the sole and express purpose of paying the necessary operating expenses of the City of Coral Gables, its departments, offices and properties for the year ending June 30, 1938, and all other appropriations by the City Commission for that year for purposes other than payments on principal and/or interest of the bonded and other indebtedness of the City.

Section 6. That the Tax Collector for the City of Coral Gables be and he is hereby authorized and instructed to proceed with the collection and enforcement of the taxes levied herein, as provided in the ordinances of the City of Coral Gables and the laws of the State of Florida which may be applicable hereto.

Section 7. If any section, part or provision of this ordinance shall be declared unconstitutional or invalid by competent authority, then the remainder of the ordinance shall not be affected thereby, and shall remain in full force and effect.

Section 8. This ordinance being an emergency measure for the protection and preservation of peace, health, safety and property, and being passed and adopted by a vote of four-fifths of the Commission of The City of Coral Gables, shall take effect immediately upon its passage and approval.

I, G. N. Shaw, Clerk for The City of Coral Gables, Florida, Do Hereby Certify that the above and foregoing is a true and correct copy of Ordinance No. 293, passed and adopted by the Commission of said City on October 18, 1937.

Witnesseth my hand and the official seal of The City of Coral Gables, Florida this ..... day of ....., A. D. 19....

.....,
City Clerk.

1743 DEFENDANTS' EXHIBIT 23.

Ordinance No. 311.

An Ordinance providing for the levy of taxes for the year beginning July 1, 1938 and ending June 30, 1939; fixing the rate of such taxes for the purpose of paying service of debts and meeting operating requirements: and providing for the segregation and application of the proceeds from the several levies.

Be It Ordained by the Commission of The City of Coral Gables, Florida:

Section 1. That for the purpose of providing necessary funds to pay the appropriations for the current expenses

of the City, and for the payment of service of principal and interest of the bonded and other debts of the City of Coral Gables, and paying other appropriations by the City Commission, there shall be levied upon the real and personal property in the City of Coral Gables, assesssed for taxes for the year 1938:

a. Upon all property within the present corporate limits of The City of Coral Gables, Florida, and such other property as was subject to taxation for payment of service of the bonded and other indebtedness of the City when incurred, which was, in either of such cases, subject to taxation under the Constitution and Laws of the State of Florida, in effect prior to November 6, 1934, a tax of 5.78 mills on the dollar, which tax shall be levied solely and expressly for the purpose of procuring funds for the payment of service of the principal and/or interest of the bonded and other indebtedness of The City of Coral Gables, exclusive of indebtednesses elsewhere specifically provided for.

b. Upon all property within the present corporate limits of The City of Coral Gables, Florida, and such other property as was subject to taxation for payment of service of the bonded and other indebtedness of The City when incurred, which was, in either such case, subject to taxation under the Constitution and Laws of the State of Florida in effect prior to November 6, 1934, a tax of 1.8997 mills on the dollar, which tax shall be levied solely and expressly for the purpose of procuring funds for the payment of certain indebtednesses in compliance with peremptory writs of mandamus and agreements heretofore entered upon by the City, and for the purpose of procuring funds for the payment of necessary and proper debt service expenses, and to provide for discounts allowable on taxes under the State Law, in accordance with the following schedule:

1.	W. J. Noel Judgment	.18605 mills
2.	Augustus T. Ashton Judgment	.13236 mills
3.	C. J. Root Judgment & Agreement ...	.3521 mills
4.	Lois Harmon Judgment	.0429 mills
5.	Fiduciary Counsel, Inc. Judgment	.6303 mills
6.	Everling-Cornman Agreement	.10489 mills
7.	Trustee Bank fees and other debt service expenses	.3011 mills
8.	Tax Discounts and Allowances	.15 mills
	Total	1.8997 mills

c. Upon all property within the present corporate limits of The City of Coral Gables, Florida, and upon such other property as was subject to taxation for the payment of service of the bonded and other indebtedness of the City when incurred, not exempt under the Constitution and Laws of the State of Florida as now written, a tax of .1503 mills on the collar, which tax shall be levied solely and expressly for the purpose of procuring funds for the payment of service of the principal and/or interest of the Refunding Bonds, Second Series, of the Issue of January 1, 1937, and other indebtednesses authorized to be refunded by Ordinance No. 289.

d. Upon all properties subject to taxation under the Constitution and Laws of the State of Florida as now written, lying in Sections 5, 7, 8, 17, 18, 19, 20 and Section 28 except in the South 231 feet thereof, and in Section 29 except in the South 231 feet thereof, East of County Road (old Miami-Homestead Highway) and in Section 30, and in that part of Section 32 to the westward of a line as follows: Begin at Coçoplum Plaza at the northwesterly corner of Lot 1, Block 1, Biscayne Bay Section Part 1, thence southeastwardly along the south shore line of the Coral Gables Waterway to the eastern line of Lot 12,

Block 1, Thence southwardly and southeastwardly along the eastern boundary of said Lot 12, Block 1, and between the two tiers of lots in Block 4 of said Section to the northeasterly corner of Lot 64 of said Block 4, thence southwestwardly along the southeastern boundary of said Lot 64 and the extension thereof to the center line of Granada Boulevard, thence northwestwardly along said center line of Granada Boulevard to its intersection with the center line of Ridge Road, thence Southwesterly along the center line of Ridge Road to its intersection with the south line of Section 32, all in Township 54 South, Range 41 east, a tax of 14.17 mills on the dollar, which tax shall be levied solely and expressly for the payment of the operating requirements of the City, and all appropriations by the City Commission for the year 1938-39, other than for the service of debt.

Section 2. That all proceeds and collections of the 5.78 mill levy ordered and made by Section 1-a hereof shall be paid upon receipt into a fund to be known as "Interest and Sinking Fund" and shall be reserved therein solely for the purpose of making payments upon the principal and/or interest of the bonded and other debts of the City, except those judgments, bonds and other debts for which other specific levies are made by this Ordinance, and shall be disbursed therefrom only for that purpose: provided, however, that there shall be paid daily into a fund to be known as "Issue of January 1, 1937 Fund" that proportion of the receipts under the levy provided for by Section 1-a hereof, representing the proportion which the amount of the Refunding Bonds and Tax Participation Certificates of the Issue of January 1, 1937, actually issued and exchanged bears to the total amount of such securities authorized to be issued by Ordinance No. 269 as amended by Ordinance No. 289.

Section 3. That all proceeds of the levy ordered by Section 1-b hereof shall be deposited daily in special accounts as follows:

a. The proceeds of items 1 to 6, inclusive, shall be deposited daily in a special account to be known as the "mandatory Levy Account", and reserved therein solely for the purpose of making payments in compliance with the peremptory writs issued upon the several judgments listed in said section, and/or of making payments upon the levies made under existing agreements with the City.

b. The proceeds from items 7 and 8 may be deposited daily in a special account to be known as "Debt Service Expense Account", or may, at the option of the Director of Finance, be deposited with the other expense funds of the City of Coral Gables.

Section 4. The levy ordered by Section 1-c hereof shall be deposited daily in an account to be known as "Interest and Sinking Fund Second Series" fund, and reserved therein solely for the purpose of making payments upon the principal and/or interest of the Second Series Refunding Bonds of the issue of January 1, 1937, and other debts proposed to be refunded under Ordinance No. 289, and shall be disbursed therefrom only for that purpose; provided, however, that there shall be paid daily into the fund to be known as "Issue of January 1, 1937 Fund, Second Series" that proportion of the receipts under the levy provided for by Section 1-c hereof, representing the proportion which the amount of the Second Series Refunding Bonds of the Issue of January 1, 1937, actually issued and exchanged bears to the total amount of such securities authorized to be issued by Ordinance No. 289.

Section 5. That the proceeds and collections of the 14.17 mill levy ordered and made by Section 1-d hereof shall be paid upon receipt into a fund to be known as the "Current Operating Fund" and shall be reserved therein until necessary and proper to be disbursed therefrom for the sole and express purpose of paying the necessary operating expenses of The City of Coral Gables, its departments, offices and properties for the year ending June 30, 1939, and all other appropriations by the City Commission for that year for purposes other than payments on principal and/or interest of the bonded and other indebtedness of the City.

Section 6. That the Tax Collector for The City of Coral Gables be and he is hereby authorized and instructed to proceed with the collection and enforcement of the taxes levied herein, as provided in the ordinances of The City of Coral Gables and the Laws of the State of Florida which may be applicable hereto.

Section 7. If any section, subsection, sentence, clause, phrase, word or amount of this Ordinance shall be declared unconstitutional or invalid by competent authority, then the remainder of the ordinance shall not be affected thereby, and shall remain in full force and effect.

Section 8. This Qrdinance, being an emergency measure for the protection and preservation of peace, health, safety and property, and being passed and adopted by a vote of four-fifths of the Commission of The City of Coral Gables, shall take effect immediately upon its passage and approval.

Passed and Adopted this 15th day of November, A. D. 1938.

1747 DEFENDANTS' EXHIBIT 24.

Ordinance No. 328.

An Ordinance providing for the levy of taxes for the year beginning July 1, 1939, and ending June 30, 1940; fixing the rate of such taxes for the purpose of paying service of debts and meeting operating requirements: and providing for the segregation and application of the proceeds from the several levies.

Be It Ordained by the Commission of the City of Coral Gables, Florida:

Section 1. That for the purpose of providing necessary funds to pay the appropriations for the current expenses of the City, and for the payment of service of principal and interest of the bonded and other debts of The City of Coral Gables, and paying other appropriations by the City Commission, there shall be devied upon the real and personal property in The City of Coral Gables, assessed for taxes for the year 1939:

a. Upon all property within the present corporate limits of The City of Coral Gables, Florida, and such other property as was subject to taxation for payment of service of the bonded and other indebtedness of the City when incurred, which was, in either of such cases, subject to taxation under the Constitution and Laws of the State of Florida, in effect prior to November 6, 1934, a tax of 5.82 mills on the dollar, which tax shall be levied solely and expressly for the purpose of procuring funds for the payment of service of the principal and/or interest of the bonded and other indebtedness of The City of Coral Gables, exclusive of indebtednesses herein elsewhere specifically provided for.

b. Upon all property within the present corporate limits of The City of Coral Gables, Florida, and such other property as was subject to taxation for payment of service of the bonded and other indebtedness of The City when incurred, which was, in either such case, subject to taxation under the Constitution and Laws of the State of Florida in effect prior to November 6, 1934, a tax of 2.28 mills on the dollar, which tax shall be levied solely and expressly for the purpose of procuring funds for the payment of certain indebtednesses in compliance with peremptory writs of mandamus and agreements heretofore entered upon by the City, and for the purpose of procuring funds for the payment of necessary and proper debt service expenses, and to provide for discounts allowable on taxes under the State Law, in accordance with the following schedule:

1.	Augustus T. Ashton Judgment	.13218
2.	Everling-Cornman Agreement	.10903
3.	Fiduciary Counsel, Inc. Judgment	.64127
4.	Lois Harmon Judgment	.04168
5.	W. J. Noel Judgment	.18581
6.	C. J. Root Judgment & Agreement	.30428
7.	Vallette Judgment	.08639
8.	Debt Service Expenses	.55596
9.	Tax Discounts	.22340
		2.28000

c. Upon all property within the present corporate limits of The City of Coral Gables, Florida, and upon such other property as was subject to taxation for the payment of service of the bonded and other indebtedness of the City when incurred, not exempt under the Constitution and Laws of the State of Florida as now written, a tax of .08 mills on the dollar, which tax shall be levied solely and expressly for the purpose of procuring funds for the

payment of service of the principal and/or interest of the Refunding Bonds, Second Series, of the Issue of January 1, 1937, and other indebtednesses authorized to be refunded by Ordinance No. 289.

d. Upon all property within the present corporate limits of The City of Coral Gables, Florida, not exempt under the Constitution and Laws of the State of Florida as now written, a tax of .127 mills on the dollar, which tax shall be levied solely and expressly for the purpose of procuring funds for the payment of service of a certain equipment note owed by the City of Coral Gables to its Trust Funds.

e. Upon all properties subject to taxation under the Constitution and Laws of the State of Florida as now written, lying in Sections 5, 7, 8, 17, 18, 19, 20 and Section 28 except in the South 231 feet thereof, and in Section 9, except in the South 231 feet thereof, East of County Road (old Miami-Homestead Highway) and in Section 30, and in that part of Section 32 to the Westward of a line as follows: Begin at Cocoplum Plaza at the northwesterly corner of Lot 1, Block 1, Biscayne Bay Section Part 1, thence southeastwardly along the south shore line of the Coral Gables Waterway to the eastern line of Lot 12, Block 1, thence southwardly and southeastwardly along the eastern boundary of said Lot 12, Block 1, and between the two tiers of lots in Block 4 of said section to the northeasterly corner of Lot 64 of said Block 4, thence southwestwardly along the southeastern boundary of said Lot 64 and the extension thereof to the center line of Granada Boulevard, thence northwestwardly along said center line of Granada Boulevard to its intersection with the center line of Ridge Road, thence southwesterly along the center line of Ridge Road to its intersection with the south line of Section 32, all in Township 54 South, Range 41 east, a

tax of 13.693 mills on the dollar, which tax shall be levied solely and expressly for the payment of the operating requirements of the City, and all appropriations by the City Commission for the year 1939-40 other than for the service of debt.

Section 2. That all proceeds and collections of the 5.82 mill levy ordered and made by Section 1-a hereof shall be paid upon receipt into a fund to be known as "Interest and Sinking Fund" and shall be reserved therein solely for the purpose of making payments upon the principal and/or interest of the bonded and other debts of the City, except those judgments, bonds and other debts for which other specific levies are made by this Ordinance, and shall be disbursed therefrom only for that purpose; provided, however, that there shall be paid daily into a fund to be known as "Issue of January 1, 1937 Fund" that proportion of the receipts under the levy provided for by Section 1a hereof, representing the proportion which the amount of the Refunding Bonds and Tax Participation Certificates of the Issue of January 1, 1937, actually issued and exchanged bears to the total amount of such securities authorized to be issued by Ordinance No. 269 as amended by Ordinance No. 289.

Section 3. That all proceeds of the levy ordered by Section 1-b hereof shall be deposited daily in special accounts as follows:

a. The proceeds of items 1 to 7, inclusive, shall be deposited daily in a special account to be known as the "Mandatory Levy Account", and reserved therein solely for the purpose of making payments in compliance with the peremptory writs issued upon the several judgments listed in said section, and/or of making payments upon the levies made under existing agreements with certain of the City's creditors.

b. The proceeds from items 8 and 9 may be deposited daily in a special account to be known as "Debt Service Expense Account", or may, at the option of the Director of Finance, be deposited with the other expense funds of The City of Coral Gables.

Section 4. The levy ordered by Section 1-c hereof shall be deposited daily in an account to be known as "Interest and Sinking Fund Second Series Fund", and reserved therein solely for the purpose of making payments upon the principal and/or interest of the Second Series Refunding Bonds of the Issue of January 1, 1937, and other debts proposed to be refunded under Ordinance No. 289, and shall be disbursed therefrom only for that purpose; provided, however, that there shall be paid daily into a fund to be known as "Issue of January 1, 1937 Fund, Second Series" that proportion of the receipts under the levy provided for by Section 1-c hereof, representing the proportion which the amount of the Second Series Refunding Bonds of the Issue of January 1, 1937, actually issued and exchanged bears to the total amount of such securities authorized to be issued by Ordinance No. 289.

Section 5. That the proceeds and collections of the .127 mill levy ordered and made by Section 1-d hereof shall be reserved for the sole purpose of paying interest upon and reducing the principal of a certain note owed by the General Fund of The City of Coral Gables to the Trust Fund.

Section 6. That the proceeds and collections of the 13.693 mill levy ordered and made by Section 1-e hereof shall be paid upon receipt into a fund to be known as the "Current Operating Fund" and shall be reserved therein until necessary and proper to be disbursed therefrom for the sole and express purpose of paying the necessary operating ex-

penses of The City of Coral Gables, its departments, offices and properties for the year ending June 30, 1940, and all other appropriations by the City Commission for that year for purposes other than payments on principal and/or interest of the bonded and other indebtedness of the City.

Section 7. That the Tax Collector for The City of Coral Gables be and he is hereby authorized and instructed to proceed with the collection and enforcement of the taxes levied herein, as provided in the ordinances of The City of Coral Gables and the Laws of the State of Florida which may be applicable hereto.

Section 8. If any section, subsection, sentence, clause, phrase, word or amount of this Ordinance shall be declared unconstitutional or invalid by competent authority, then the remainder of the ordinance shall not be affected thereby, and shall remain in full force and effect.

Section 9. This ordinance, being an emergency measure for the protection and preservation of peace, health, safety and property, and being passed and adopted by a vote of four-fifths of the Commission of The City of Coral Gables, shall take effect immediately upon its passage and approval.

Passed and Adopted this 19th day of September, 1939.

1752 DEFENDANTS' EXHIBIT 25.

Ordinance No. 379.

An Ordinance providing for the levy of taxes for the year beginning July 1, 1940, and ending July 1, 1941; fixing the rate of such taxes for the purpose of paying service

of debts and meeting operating requirements: and providing for the segregation and application of the proceeds of the several levies.

Be It Ordained by the Commission of the City of Coral Gables, Florida:

Section 1. That for the purpose of providing necessary funds to pay the appropriation for the current expenses of the City, and for the payment of principal and/or interest of the bonded and other debts of The City of Coral Gables, and for paying other appropriations by the City Commission, there shall be levied upon the real and personal property in The City of Coral Gables, assessed for taxes for the year 1940, the following taxes, which taxes shall be levied solely and expressly for the payment of the expenses or of the service of the principal and/or interest of the particular obligation described in connection therewith:

Upon all property in the present corporate limits of The City of Coral Gables, and such other property as was subject to taxation for payment of the bonded indebtedness of the City when incurred, which was, in either such case, subject to taxation under the Constitution and Laws of the State of Florida in effect prior to November 6, 1934:

a. A tax of 5.77 mills upon the dollar for the payment of service of principal and/or interest of the bonded and other indebtedness of The City of Coral Gables, exclusive of indebtedness herein elsewhere specifically provided for; collections of this levy shall be paid daily as received into a fund to be known as "Issue of January 1, 1937 Fund", and reserved therein and disbursed therefrom for the payment of interest upon Refunding Bonds of the issue

of January 1, 1937 First Series, as the coupons shall mature upon the bonds actually issued in exchange for old obligations, and for a reserve for the payment of like interest coupons upon those bonds of that issue held for future exchange for remaining outstanding old obligations, and after making and reserving such interest payments the balance as of June 30, 1941, shall be paid into the Tax Participation Certificate Fund, and therein similarly paid or reserved for pro-rata payments upon the Tax Participation Certificates, Issue of January 1, 1937, First Series, both issued and held for future issue and exchange; all procedure in connection with this levy and the collections therefrom shall conform to the provisions of Ordinance 269 as amended by Ordinance 289; and,

b. Pursuant to order of the United States District Court in the Bankruptcy Proceeding, No. 1867-M, of the City of Coral Gables, a tax of 1.26661 mills upon the dollar for the payment of service of principal and/or interest of the claims of the certain creditors listed below, and in the respective amounts produced by the millages set opposite the name of each such creditor; as follows:

Augustus T. Ashton Judgment	.11851 mills
Fiduciary Counsel, Inc., Judgment	.58863 mills
Jeanette S. Conklin, Successor to Lois Harmon Judgment	.03795 mills
W. J. Noel Judgment	.16653 mills
C. J. Root Judgment	.27744 mills
G. E. Vallette Judgment	.07755 mills
	1.26661 mills

collections of this levy shall be paid daily as received into a fund to be known as the "Mandatory Levy Fund", and reserved therein and disbursed therefrom for payments

upon the above claims, unless the proceeds of this levy shall be released to other purposes by said Court; and,

c. A Tax of .96339 mills upon the dollar, for the following purposes, and in the respective amounts produced by the millages set opposite thereto:

For the purchase of certain The City of Coral Gables Bonds, and for the payment of certain expenses and taxes, under an agreement authorized by Resolution 1762	.10380 mills
Providing for statutory tax discounts	.29485 mills
Payment of Debt Service Expenses	.56474 mills
	.96339 mills

collections of this levy may, at the discretion of the Director of Finance, be placed in a separate fund, or may be placed in the regular operating funds of the City.

Upon all property within the present corporate limits of The City of Coral Gables, and such other property as was subject to the payment of the bonded and other indebtedness of the City when incurred, not exempt under the Constitution and Laws of the State of Florida as now written:

d. A tax of .12 mills upon the dollar, for the payment of service of the principal and interest of the indebtedness refunded under or authorized to be refunded by Ordinance 289; collections of this levy shall be paid daily as received into a fund to be known as "Issue of January 1, 1937, Fund, Second Series", and reserved therein and disbursed therefrom for the payment of interest upon Refunding Bonds of the issue of January 1, 1937, Second Series, as the coupons shall mature upon the bonds actually

issued in exchange for old obligations, and for a reserve for the payment of like interest coupons upon those bonds of that issue held for future exchange for remaining outstanding old obligations, and after making and reserving such interest payments the balance as of June 30, 1941, shall be paid into the Tax Participation Certificate Fund, and therein similarly paid or reserved for pro-rata payments upon the Tax Participation Certificates, Issue of January 1, 1937, Second Series, both issued and held for future issue and exchange; all procedure in connection with this levy and the collections therefrom shall conform to the provisions of Ordinance 269 as amended by ordinance 289; and,

e. A tax of .59588 mills upon the dollar for the payment of service of principal and interest of certain obligations incurred since January 1, 1937, in the respective amounts produced by the millages set opposite the description of each such item, as follows:

Equipment Notes:	
Grader	.12296 mills
Sweeper	.10426 mills
Incinerator Construction Notes:	
Trucks & Cars	.16850 mills
	.20016 mills
	.59588 mills

collections of this levy may, at the discretion of the Director of Finance, be placed in a separate fund, or may be placed in the regular operating funds of the City.

Upon all property subject to taxation under the Constitution and Laws of the State of Florida as now written, lying in Sections 5, 7, 8, 17, 18, 19, 20 and Section 28 ex-

cept in the South 231 feet thereof, and in Section 29 except in the South 231 feet thereof, East of County Road (old Miami-Homestead Highway) and in Section 30, and in that part of Section 32 to the westward of a line as follows: Begin at Cocoplum Plaza at the northwesterly corner of Lot 1, Block 1, Biscayne Bay Section Part 1, thence southeastwardly along the south shore line of the Coral Gables Waterway to the eastern line of Lot 12, Black 1, thence southwardly and southeastwardly along the eastern boundary of said Lot 12, Block 1, and between the two tiers of lots in Block 4 of said section to the northeasterly corner of Lot 64 of said Block 4, thence southwestwardly along the southeastern boundary of said Lot 64 and the extension thereof to the center line of Granada Boulevard, thence northwestwardly along said center line of Granada Boulevard to its intersection with the center line of Ridge Road, thence southwesterly along the center line of Ridge Road to its intersection with the south line of Section 32, all in Township 54 South, Range 41 east, a tax of 13.28412 mills on the dollar; collections of this levy shall be paid daily as received into a fund to be known as the "Current Operating Fund", and shall be reserved therein until necessary and proper to be disbursed therefrom for the sole and express purpose of paying the necessary operating expenses of The City of Coral Gables, its departments, offices and properties, for the year ending June 30, 1941, and all other appropriations by the City Commission for said year for purposes other than payments on principal and/or interest of the bonded and other indebtedness of the City.

Section 2. That the Tax Collector for The City of Coral Gables be and he is hereby authorized and instructed to proceed with the collection and enforcement of the taxes levied herein, as provided in the ordinances of The City of Coral Gables and the Laws of the State of Florida which may be applicable hereto.

Section 3. If any section, subsection, sentence, clause, phrase, word or amount of this Ordinance shall be declared unconstitutional or invalid by competent authority, then the remainder of the ordinance shall not be affected thereby, and shall remain in full force and effect.

Section 4. This ordinance, being an emergency measure for the protection and preservation of peace, health, safety and property, and being passed and adopted by vote of four-fifths of the Commission of The City of Coral Gables, shall take effect immediately upon its passage and approval.

Passed and Adopted this 17th day of September, A. D. 1940.

1757 DEFENDANT'S EXHIBIT #27.

For Indentification. F. M. Hudson, Master.

Contract.

This Agreement made and executed in triplicate on this 13th day of May, A. D. 1938, by and between Lois H. Harmon, a citizen of the State of Tennessee, by her attorney of record, A. Judson Hill, party of the first part, and The City of Coral Gables, hereinafter called the "City",

Witnesseth:

That the party of the first part, the owner and holder of a Final Judgment, entered April 13th, 1938, and recorded in Judgment Book 2, page 252, against The City of Coral Gables, in the United States District Court in and for the Southern District of Florida, cause No. 2466-M-Civil, in the principal amount of Seven Thousand Two Hundred Seventy-eight Dollars and Ninety Cents ($7,278.90), hereby sells, assigns and transfers to the City the said Final Judgment in consideration of the sum of Two Thousand Two Hundred Seventy-eight Dollars and

Ninety Cents ($2,278.90) cash in hand paid by the City, receipt of which is hereby acknowledged, and the promise of the City to pay the balance of the amount due on said judgment in equal annual installments over a period of seven (7) years together with interest at the rate of three and one-half (3½%) per cent per annum from the date of the said judgment, and as security to guarantee the promise of the City to make the deferred payments under this Agreement the said parties, for themselves, their heirs, successors and assigns, hereby covenant and agree as follows:

1. By stipulation between the parties hereto a peremptory writ of mandamus shall issue in the said suit of Lois H. Harmon vs. City of Coral Gables, No. 2466-M-Civil, requiring the City to make a special earmarked levy of taxes for payment of the Final Judgment in said cause, beginning in the fiscal year 1938-39 and for each of the next six (6) fiscal years, sufficient to pay during each of said seven (7) fiscal years one-seventh (1/7th) of the balance of Five Thousand ($5,000.00) Dollars due upon said judgment, together with interest at the rate of three and one-half (3½%) per cent per annum upon the balance of said judment from time to time remaining outstanding and unpaid.

2. That the City will pay over to the party of the first part, her heirs or assigns, and her, or their attorney of record in the said cause, on or before the 15th day of each month the proceeds from the said special earmarked tax levy collected by the City during the preceding month, and on or before July 1, 1945, will pay in full the balance of the principal amount of said judgment together with interest at the rate of three and one-half (3½%) per cent per annum on the part of said judgment from time to time remaining outstanding and unpaid.

3. Upon the payment in full of the aforesaid judgment together with interest thereon at the said rate, the party of the first part covenants and agrees for herself, her heirs and assigns, to execute or cause to be executed and delivered to the City an unconditional assignment of said judgment.

In Witness Whereof, the said party of the first part has hereunto set her hand and seal by her attorney of record in said cause, and said municipality has caused these presents to be signed in its name, by its Mayor, attested by its City Clerk, and its corporate seal to be affixed, on the day, month and year first above written.

LOIS HARMON,
By A. JUDSON HILL,
(Seal) Attorney of Record.
THE CITY OF CORAL GABLES,
PAUL D. McGARRY,
Mayor.

Attest:

G. N. SHAW,
City Clerk.

Signed, sealed and delivered in the presence of:
KATHARINE S. EDGAR,
MORTON B. ADAMS.
(Corp. Seal)
E. M. WILLIAMS,
KATHARINE S. EDGAR.

Approved:
MORTON B. ADAMS,
As Attorney for The City of Coral Gables.

DEFENDANT'S EXHIBIT 28 (Revised.)

The City of Coral Gables.

Statement of Use of Levies for Bonded and Other Debt (Other Than Judgments).

	1937/38	1938/39	1939/40	1940/41
Paid to refunding bonds of owners other than City	87,658.69	86,604.02	104,416.94	103,785.00
Paid to City on Refunding bonds owned	8,816.30	10,373.73	11,541.78	10,089.54
Reserved for debts not refunded	6,563.41	4,923.23	4,890.00	4,815.00
	103,038.40	101,900.98	120,848.72	118,689.54
Paid to TPC'S of owners other than City	12,787.47	20,160.60	13,924.65	16,460.04
Paid to City on TPC'S owned	430.33	752.65	525.72	622.13
Reserved for debts not refunded	1,139.99	953.84	650.22	719.66
	14,357.79	21,867.09	15,100.59	17,801.83
Total to Others	$100,446.16	$106,764.62	$118,341.69	$120,245.04
Total to City	9,246.63	11,126.38	12,067.50	10,711.67
Total Reserved	7,703.40	5,877.07	5,540.22	5,534.66
	$117,396.19	$123,768.07	$135,949.41	$136,491.37

Note: The amounts shown as "Reserve for Debts not Refunded", are the amounts applicable each year to those refunding bonds and tax particpation certificates being held for exchange for bonds of the original issues not refunded at the end of the year. These reserves do not include any amount for the debts existing in the form of judgments and mandatory levy orders, since debts of that class have been serviced from levies separate from and in addition to the levies for the refunding issues.

DEFENDANT'S EXHIBIT 29.

Filed June 24, 1941, F. M. Hudson, Master.

The City of Coral Gables.

Analysis of Judgments, Mandatory Levy Writs, and Related Agreements, Showing Payments Thereon Through June 27, 1940.

	Fiduciary Counsel, Inc. Exh. C, p. 26	Augustus T. Ashton Exh. C, p. 25	Lois Harmon Exh. C, p. 30	W. J. Noel Exh. C, p. 31	C. J. Root Judgment and Agreement Exh. C, p. 28	G. E. Vallette Exh. C, p. 32
Judgment and/or agreement based on:						
Bonds	90,000.00	10,000.00	5,000.00	13,000.00	30,000.00	6,000.00
Coupons	25,920.00	247.50	1,590.00	4,200.00	15,840.00	1,350.00
Interest on past due bonds	8,058.49	3,428.87	284.53	1,171.66	2,883.47	862.50
Interest on Interest	6,877.36	94.98	391.37	994.00	3,330.83	411.39
Interest on Judgment ...	.....	.....	.....	.....	501.56	.....
Amount of Judgment and/-or Agreement	130,855.85	13,771.35	7,265.90	19,365.66	52,555.86	8,623.89
Payments thru June 27, 1940 on principal of judgment or agreement	40,651.39*	7,280.41	3,786.64	10,224.64	9,315.95	3,021.22
on interest on judgment or agreement	9,477.36	1,547.63	340.68	2,518.66	5,117.94	793.77
Total Paid	50,128.75*	8,828.40	4,127.32	12,743.30	14,433.89	3,815.59

* Contains $8,000.00 paid out of proceeds of sale of delinquent taxes, as shown on Defendant's Exhibit #8. Costs eliminated from both judgment amounts and payments.

EX. 29.

The City of Coral Gables.

Analysis of Judgments, Mandatory Levy Writs, and Related Agreements, Showing Payments Thereon Through June 27, 1940.

	Fiduciary Counsel, Inc. Exh. C, p. 26	Augustus T. Ashton Exh. C, p. 25	Lois Harmon Exh. C, p. 30	W. J. Noel Exh. C, p. 31	C. J. Root		G. E. Vallette Exh. C, p. 32
					Judgment Exh. C, p. 28	Agreement	
Judgment based on:							
Bonds	90,000.00	10,000.00	5,000.00	13,000.00	14,000.00	16,000.00	6,000.00
Coupons	25,920.00	247.50	1,590.00	4,200.00	14,685.00	1,155.00	1,350.00
Interest on past due bonds	8,058.49	3,428.87	284.53	1,171.66	2,718.47	165.00	862.50
Interest on Interest	6,877.36	94.98	391.37	994.00	3,330.83	.....	411.39
Interest on Judgment	.....	.....	.....	.....	.....	501.56	.....
Amount of Judgment or Agreement	130,855.85	13,771.35	7,265.90	19,365.66	34,734.30	17,821.56	8,623.89
Payments thru June 27, 1940 on principal of judgment or agreement	40,651.39*	7,280.41	3,786.64	10,224.64	9,315.95		3.021.82
on interest on judgment or agreement	9,477.36	1,547.63	340.68	2,518.66	5,117.94		793.77
Total Paid	50,128.75*	8,828.04	4,127.32	12,743.30	14,433.89		3,815.59
Judgment contained refundable items as of January 1, 1937:							
Bonds	90,000.00	10,000.00	5,000.00	13,000.00	30,000.00		6,000.00
Coupons	25,920.00	247.50	1,590.00	4,200.00	15,184.58		1,320.00
Interest on past due bonds	4,980.00	3,108.75	.....	1,020.00	2,277.90		450.00
	120,900.00	13,356.25	6,590.00	18,220.00	47,462.48		7,770.00

* Contains $8,000.00 paid out of proceeds of sale of delinquent taxes, as shown on Defendant's Exhibit #8. Costs eliminated from both judgment amounts and payments.

DEFTS. EX. 35.

(1) Fiscal Year	(2) Bonds Outstanding	(3) Int. Rate	(4) Interest Requirements	(5) Bonds Retired at Par	(6) Assessed Value Total	(7) Millage	(8) Levy
1941-42	454,384.23	3%	13,631.52	—o—	25,595,630.	.7	17,916.94
1942-43	454,384.23	3%	13,631.52	—o—	26,152,940.	.7	18,307.06
1943-44	454,384.23	3%	13,631.52	—o—	26,737,373.	.7	18,716.16
1944-45	454,384.23	3%	13,631.52	—o—	27,349,707.	.7	19,144.79
1945-46	454,384.23	3½%	15,903.45	—o—	27,986,751.	.7	19,590.73
1946-47	454,384.23	3½%	15,728.45	2,384.23	28,661,346.	.7	20,062.94
1947-48	452,000.00	4%	18,080.00	2,000.00	29,362,366.	.75	22,021.77
1948-49	450,000.00	4%	18,000.00	2,000.00	30,094,720.	.75	22,571.04
1949-50	448,000.00	4%	17,920.00	2,000.00	30,859,351.	.75	23,144.51
1950-51	446,000.00	4%	17,840.00	2,000.00	31,657,239.	.75	23,742.93
1951-52	444,000.00	4%	17,760.00	2,000.00	32,489,402.	.75	24,367.05
1952-53	442,000.00	4½%	19,890.00	2,000.00	33,356,898.	.75	25,017.67
1953-54	440,000.00	4½%	19,800.00	2,000.00	34,260,823.	.75	25,695.61
1954-55	438,000.00	4½%	19,710.00	2,000.00	35,202,316.	.75	26,401.73
1955-56	436,000.00	4½%	19,620.00	3,000.00	36,182,557.	.75	27,136.91
1956-57	433,000.00	4½%	19,485.00	4,000.00	37,202,774.	.75	27,902.08
1957-58	429,000.00	4½%	19,305.00	5,000.00	38,264,237.	.75	28,698.17
1958-59	424,000.00	4½%	19,808.00	6,000.00	39,368,266.	.75	29,526.19
1959-60	418,000.00	4½%	18,810.00	7,000.00	40,516,228.	.75	30,387.17
1960-61	411,000.00	4½%	18,495.00	8,000.00	41,709,542.	.75	31,282.15
1961-62	403,000.00	4½%	18,135.00	9,000.00	42,949,679.	.75	32,212.25
1962-63	394,000.00	5%	19,700.00	9,000.00	44,238,164.	.75	33,178.62
1963-64	385,000.00	5%	19,250.00	10,000.00	45,576,578.	.80	36,461.26
1964-65	375,000.00	5%	18,750.00	12,000.00	46,966,560.	.80	37,573.25
1965-66	363,000.00	5%	18,150.00	14,000.00	48,409,808.	.80	38,727.85
1966-67	349,000.00	5%	17,450.00	17,000.00	49,908,083.	.80	39,926.46
1967-68	332,000.00	5%	16,600.00	20,000.00	51,463,208.	.85	43,743.72
1968-69	312,000.00	5%	15,600.00	22,000.00	53,077,075.	.85	45,115.51
1969-70	290,000.00	5%	14,500.00	25,000.00	54,751,643.	.85	46,538.89
1970-71	265,000.00	5%	13,250.00	27,000.00	56,488,941.	.85	48,015.59
1971-72	238,000.00	5%	11,900.00	30,000.00	58,291,072.	.85	49,547.41
1972-73	208,000.00	5%	10,400.00	33,000.00	60,160,215.	.85	51,136.17
1973-74	175,000.00	5%	8,750.00	36,000.00	62,098,627.	.85	52,783.83
1974-75	139,000.00	5%	6,950.00	40,000.00	64,108,645.	.85	54,492.35
1975-76	99,000.00	5%	4,950.00	46,000.00	66,192,690.	.90	59,573.42
1976-77	53,000.00	5%	2,650.00	53,000.00	68,353,272.	.90	61,517.94

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FOR REMAINDER OF PAGE

DEFTS. EX. 35.

(4) Interest Requirements	(5) Bonds Retired at Par	(6) Assessed Value Total	(7) Millage	(8) Levy	(9) 80% Current Collection	(10) 5% Delinquent Collection	(11) Total Collection	(12) Surplus	(13) Reserve
13,631.52	—o—	25,595,630.	.7	17,916.94	14,333.55	—o—	14,333.55	702.03	702.03
13,631.52	—o—	26,152,940.	.7	18,307.06	14,645.65	—o—	14,645.65	1,014.15	1,716.16
13,631.52	—o—	26,737,373.	.7	18,716.16	14,972.93	895.85	15,868.78	2,237.26	3,953.42
13,631.52	—o—	27,349,707.	.7	19,144.79	15,315.83	915.35	16,231.18	2,599.66	6,553.08
15,903.45	—o—	27,986,751.	.7	19,590.73	15,672.58	935.80	16,608.38	704.93	7,258.01
15,728.45	2,384.23	28,661,346.	.7	20,062.94	16,050.35	957.23	17,007.58	1,280.10—	5,977.91
18,080.00	2,000.00	29,362,366.	.75	22,021.77	17,617.41	979.53	18,596.94	1,483.06—	4,494.85
18,000.00	2,000.00	30,094,720.	.75	22,571.04	18,056.83	1,003.14	19,059.97	940.03—	3,564.82
17,920.00	2,000.00	30,859,351.	.75	23,144.51	18,515.60	1,101.08	19,616.68	303.32—	3,251.50
17,840.00	2,000.00	31,657,239.	.75	23,742.93	18,994.34	1,128.55	20,122.89	282.89	3,534.39
17,760.00	2,000.00	32,489,402.	.75	24,367.05	19,493.64	1,157.22	20,650.86	890.86	4,425.25
19,890.00	2,000.00	33,356,898.	.75	25,017.67	20,014.13	1,187.14	21,201.27	688.73—	3,736.52
19,800.00	2,000.00	34,260,823.	.75	25,695.61	20,556.48	1,218.35	21,774.83	25.17—	3,711.35
19,710.00	2,000.00	35,202,316.	.75	26,401.73	21,121.38	1,250.88	22,372.26	662.26	4,373.61
19,620.00	3,000.00	36,182,557.	.75	27,136.91	21,709.52	1,284.78	22,994.30	374.30	4,747.91
19,485.00	4,000.00	37,202,774.	.75	27,902.08	22,321.66	1,320.08	23,641.74	156.74	4,904.65
19,305.00	5,000.00	38,264,237.	.75	28,698.17	22,958.53	1,356.84	24,315.37	10.37	4,915.02
19,808.00	6,000.00	39,368,266.	.75	29,526.19	23,620.95	1,395.10	25,016.05	63.95—	4,851.07
18,810.00	7,000.00	40,516,228.	.75	30,387.17	24,309.73	1,434.90	25,744.63	65.37—	4,785.70
18,495.00	8,000.00	41,709,542.	.75	31,282.15	25,025.72	1,476.30	26,502.02	7.02	4,792.72
18,135.00	9,000.00	42,949,679.	.75	32,212.25	25,769.80	1,519.35	27,289.15	154.15	4,946.87
19,700.00	9,000.00	44,238,164.	.75	33,178.62	26,542.89	1,564.10	28,106.99	593.01—	4,353.86
19,250.00	10,000.00	45,576,578.	.80	36,461.26	29,169.01	1,610.61	30,779.62	1,529.62	5,883.48
18,750.00	12,000.00	46,966,560.	.80	37,573.25	30,058.60	1,658.93	31,717.53	967.53	6,851.01
18,150.00	14,000.00	48,409,808.	.80	38,727.85	30,982.28	1,823.06	32,805.34	655.34	7,506.35
17,450.00	17,000.00	49,908,083.	.80	39,926.46	31,941.17	1,878.66	33,819.83	630.17—	6,876.18
16,600.00	20,000.00	51,463,208.	.85	43,743.72	34,994.97	1,549.11	36,544.08	55.92—	6,820.26
15,600.00	22,000.00	53,077,075.	.85	45,115.51	36,092.40	1,996.32	38,088.72	488.72	7,308.98
14,500.00	25,000.00	54,751,643.	.85	46,538.89	37,231.11	2,187.18	39,418.29	81.71—	7,227.27
13,250.00	27,000.00	56,488,941.	.85	48,015.59	38,412.47	2,255.77	40,668.24	418.24	7,645.51
11,900.00	30,000.00	58,291,072.	.85	49,547.41	39,637.92	2,326.94	41,964.86	64.86	7,710.37
10,400.00	33,000.00	60,160,215.	.85	51,136.17	40,908.94	2,400.77	43,309.71	90.29—	7,620.08
8,750.00	36,000.00	62,098,627.	.85	52,783.83	42,227.06	2,477.37	44,704.43	45.57—	7,574.51
6,950.00	40,000.00	64,108,645.	.85	54,492.35	43,593.88	2,556.80	46,150.68	799.32—	6,775.19
4,950.00	46,000.00	66,192,690.	.90	59,573.42	47,658.73	2,539.16	50,297.89	652.11—	6,123.08
2,650.00	53,000.00	68,353,272.	.90	61,517.94	49,214.35	2,724.61	51,938.96	3,711.04—	2,412.04

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1764 DEFENDANT'S EXHIBIT 38.

Filed June 26, 1941, F. M. Hudson, Master.

Resolution No. .....

A Resolution Authorizing the Execution of an Agreement for the Purchase of Certain Matured Coupons of Outstanding Original Bonds of the City of Coral Gables with Ed. C. Wright & Company, Inc.

Whereas, the City has been negotiating with Ed. C. Wright & Company, Inc., the holder of a substantial block of old bonds and coupons of the City, for the refinancing of the same; and

Whereas, the attached contract has been proposed as a means toward refinancing the bonds and coupons controlled by him and other bonds and coupons not refunded;

Now, Therefore, Be It Resolved By The City Commission Of The City Of Coral Gables:

That the Mayor and City Clerk be and they are hereby authorized and directed to execute in the name of the City the agreement, copy of which is hereto attached.

Passed and Adopted this 2nd day of August, A. D. 1939.

I, G. N. Shaw, Clerk of The City of Coral Gables, Florida, Do Hereby Certify that the above and foregoing is a true and correct copy of the Resolution No. ..... passed and adopted by the Commission of said City of August 2, 1939.

Witnesseth my hand and the Official Seal of The City of Coral Gables, this day of August, A. D. 1939.

.....

City Clerk.

Memorandum Of Agreement, Made and entered into this 3rd day of August, A. D. 1939, by and between The City Of Coral Gables, Florida, a municipal corporation, as party of the first part, and Ed. C. Wright & Company, Inc., a Florida corporation, as party of the second part,

Witnesseth:

Whereas, the party of the second part owns or controls certain bonds of The City of Coral Gables in the principal amount of $252,000.00, together with matured coupons from bonds of The City of Coral Gables aggregating approximately $115,000.00; and

Whereas, the parties hereto have entered into verbal agreements which they are now desirous of reducing to writing,

Now, Therefore, for and in consideration of the sum of One Dollar ($1.00) lawful money of the United States, in hand paid by the party of the second part to the party of the first part, receipt whereof is hereby acknowledged,

It Is Understood And Agreed as follows:

1. The party of the first part hereby agrees to purchase from the party of the second part within sixty (60) days from the date hereof, certain of its matured coupons from bonds of The City of Coral Gables having a face value of $19,312.50 for the sum of $12,875.00.

2. The party of the first part further agrees that for its fiscal year 1939-40, it will levy a tax of 3/10 of one mill on its finally equalized and extended assessment roll; the proceeds of said levy to be applied by the party of the first part to the purchase of additional matured interest

coupons from bonds of The City of Coral Gables of the party of the second part on a basis of 2/3 of their face value; such purchases to be made on or before the 15th day of each month during the term of this agreement, commencing December 15, 1939.

3. The party of the first part reserves the right, in lieu of the making of such levy for the express purpose above stated, to raise said funds by such other method as it may decide, provided however, that it agrees to purchase, during the term of this agreement, matured coupons from bonds of The City of Coral Gables of the party of the second part on the basis of 2/3 of their face value, in the same amount which the proceeds of a 3/10 of one mill levy would produce, had such levy been made; said purchase of coupons to be made on or before the 15th day of each month during the term of this agreement, commencing December 15, 1939.

4. The party of the first part further agrees that during the term of this agreement, it shall not take any steps leadto the institution by it of bankruptcy proceedings, or to anywise impair or permit to be impaired, the rights of the party of the second part under the terms of this agreement, or the rights accruing to it by reason of its ownership or control of bonds or coupons of The City of Coral Gables.

5. The party of the second part, on its part, agrees to sell its matured coupons from bonds of The City of Coral Gables, in the amounts set forth in paragraphs 1 and 2 of this agreement in accordance with the terms hereof, and subject to the conditions hereinafter set forth agrees to withhold any action in law or in equity for the enforcement of the payment of its bonds or coupons herein mentioned, during the term of this agreement.

6. In the event of the institution of any action, in law or in equity against the party of the first part by the holders of other bonds or coupons of The City of Coral Gables, or judgments against The City of Coral Gables, of any suit or any proceeding involving the bonded indebtedness of the party of the first part, during the term of this agreement, which, in the opinion of both parties hereto adversely affects or impairs its rights under the terms of this agreement, or will result in the impairment of the value of the securities owned or controlled by it, then and in such event the party of the second part may, at its option, take such action in law or in equity, as it may deem expedient to enforce the payment of the bonds and the coupons of the said The City of Coral Gables herein mentioned.

7. It is mutually agreed that this agreement shall be and remain in effect from the date hereof to the 15th day of July, 1940.

In Witness Whereof the parties hereto have caused this instrument to be executed in duplicate by its duly authorized officers and its corporate seals hereto attached the day and year first above written.

THE CITY OF CORAL GABLES,

By .....
Mayor.

Attest:

.....
City Clerk. Party of the First part.

ED. C. WRIGHT & COMPANY, INC.,

(Corp. Seal)

By .....
President.

Attest:

.....
Secretary.

DEFTS. EX. 43.

(1) Fiscal Year	(2) Bonds Outstanding	(3) Int. Rate	(4) Interest Requirements	(5) Bonds Retired at Par	(6) Assessed Value Total	(7) Millage	(8) Levy	(9) 80% Current Collection	(10) 5% Delinquent Collection	(11) Total Collection
1941-42	687,884.23	3	20,636.52	—o—	25,595,630.00	1.03	26,363.50	21,090.80	—o—	21,090.80
1942-43	687,884.23	3	20,636.52	—o—	26,152,940.00	1.09	28,506.70	22,805.36	—o—	22,805.36
1943-44	687,884.23	3	20,636.52	—o—	26,737,373.00	1.09	29,143.74	23,314.99	1,318.17	24,633.16
1944-45	687,884.23	3	20,636.52	—o—	27,349,707.00	1.09	29,811.18	23,848.94	1,425.33	25,274.27
1945-46	687,884.23	3½	24,075.95	—o—	27,986,751.00	1.09	30,505.56	24,404.44	1,457.18	25,861.62
1946-47	687,884.23	3½	24,075.95	3,884.23	28,661,346.00	1.09	31,240.86	24,992.68	1,490.55	26,483.23
1947-48	684,000.00	4	27,360.00	1,000.00	29,362,366.00	1.17	34,353.96	27,483.16	1,525.27	29,008.43
1948-49	683,000.00	4	27,320.00	2,000.00	30,094,720.00	1.17	35,310.82	28,168.65	1,562.04	29,730.69
1949-50	681,000.00	4	27,240.00	3,000.00	30,859,351.00	1.17	36,105.44	28,884.35	1,777.69	30,662.04
1950-51	678,000.00	4	27,120.00	4,000.00	31,657,239.00	1.17	37,038.97	29,631.17	1,760.54	31,391.71
1951-52	674,000.00	4	26,960.00	6,000.00	32,489,402.00	1.17	38,012.60	30,410.08	1,805.27	32,215.35
1952-53	668,000.00	4½	30,060.00	5,000.00	33,356,898.00	1.17	39,027.57	31,222.05	1,851.94	33,073.99
1953-54	663,000.00	4½	29,835.00	4,000.00	34,260,823.00	1.17	40,085.16	32,068.12	1,900.63	33,968.75
1954-55	659,000.00	4½	29,655.00	5,000.00	35,202,316.00	1.17	41,186.70	32,949.36	1,951.37	34,900.73
1955-56	654,000.00	4½	29,430.00	7,000.00	36,182,557.00	1.17	42,333.59	33,866.87	2,004.25	35,871.12
1956-57	647,000.00	4½	29,115.00	8,000.00	37,202,774.00	1.17	43,527.24	34,821.79	2,059.33	36,881.12
1957-58	639,000.00	4½	28,755.00	9,000.00	38,264,237.00	1.19	45,534.44	36,427.55	2,116.67	38,544.22
1958-59	630,000.00	4½	28,350.00	12,000.00	39,368,266.00	1.19	46,848.23	37,478.58	2,176.36	39,654.94
1959-60	618,000.00	4½	27,810.00	13,000.00	40,516,228.00	1.19	48,214.31	38,571.44	2,276.72	40,848.16
1960-61	605,000.00	4½	27,225.00	15,000.00	41,709,542.00	1.19	49,634.35	39,707.48	2,342.41	42,049.89
1961-62	590,000.00	4½	26,550.00	16,000.00	42,949,679.00	1.19	51,110.11	40,888.08	2,410.71	43,298.79
1962-63	574,000.00	5	28,700.00	16,000.00	44,238,164.00	1.19	52,643.41	42,114.72	2,481.71	44,596.43
1963-64	558,000.00	5	27,900.00	18,000.00	45,576,578.00	1.19	54,236.12	43,388.89	2,555.50	45,944.39
1964-65	540,000.00	5	27,000.00	20,000.00	46,966,560.00	1.19	55,890.20	44,712.16	2,632.17	47,344.33
1965-66	520,000.00	5	26,000.00	23,000.00	48,409,808.00	1.19	57,607.67	46,086.13	2,711.80	48,797.93
1966-67	497,000.00	5	24,850.00	25,000.00	49,908,083.00	1.19	59,390.61	47,512.48	2,794.51	50,306.99
1967-68	472,000.00	5	23,600.00	28,000.00	51,463,208.00	1.19	61,241.21	48,992.96	2,880.38	51,873.34
1968-69	444,000.00	5	22,200.00	31,000.00	53,077,075.00	1.19	63,161.71	50,529.36	2,969.53	53,498.89
1969-70	413,000.00	5	20,650.00	34,000.00	54,751,643.00	1.19	65,154.45	52,123.56	3,062.06	55,185.62
1970-71	379,000.00	5	18,950.00	38,000.00	56,488,941.00	1.19	67,221.83	53,777.46	3,158.08	56,935.54
1971-72	341,000.00	5	17,050.00	41,000.00	58,291,072.00	1.19	69,366.37	55,493.09	3,257.72	58,750.81
1972-73	300,000.00	5	15,000.00	45,000.00	60,160,215.00	1.19	71,590.65	57,272.52	3,361.09	60,633.51
1973-74	255,000.00	5	12,750.00	53,000.00	62,098,627.00	1.25	77,623.28	62,098.62	3,468.31	65,566.93
1974-75	202,000.00	5	10,100.00	57,000.00	64,108,645.00	1.25	80,135.80	64,108.64	3,579.53	67,688.17
1975-76	145,000.00	5	7,250.00	63,000.00	66,192,690.00	1.25	82,740.86	66,192.68	3,881.16	70,073.84
1976-77	82,000.00	5	4,100.00	82,000.00	68,353,272.00	1.25	85,441.59	68,353.27	4,006.79	72,360.06

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DEFTS. EX. 43.

(5) Bonds Retired at Par	(6) Assessed Value Total	(7) Millage	(8) Levy	(9) 80% Current Collection	(10) 5% Delinquent Collection	(11) Total Collection	(12) Surplus	(13) Reserve
—o—	25,595,630.00	1.03	26,363.50	21,090.80	—o—	21,090.80	454.28	454.28
—o—	26,152,940.00	1.09	28,506.70	22,805.36	—o—	22,805.36	2,168.84	2,623.12
—o—	26,737,373.00	1.09	29,143.74	23,314.99	1,318.17	24,633.16	3,996.64	6,619.76
—o—	27,349,707.00	1.09	29,811.18	23,848.94	1,425.33	25,274.27	4,637.75	11,257.51
—o—	27,986,751.00	1.09	30,505.56	24,404.44	1,457.18	25,861.62	1,785.67	13,043.18
3,884.23	28,661,346.00	1.09	31,240.86	24,992.68	1,490.55	26,483.23	1,476.95—	11,566.23
1,000.00	29,362,366.00	1.17	34,353.96	27,483.16	1,525.27	29,008.43	648.43	12,214.66
2,000.00	30,094,720.00	1.17	35,310.82	28,168.65	1,562.04	29,730.69	410.69	12,625.35
3,000.00	30,859,351.00	1.17	36,105.44	28,884.35	1,777.69	30,662.04	422.04	13,047.39
4,000.00	31,657,239.00	1.17	37,038.97	29,631.17	1,760.54	31,391.71	271.71	13,319.10
6,000.00	32,489,402.00	1.17	38,012.60	30,410.08	1,805.27	32,215.35	744.65—	12,574.45
5,000.00	33,356,898.00	1.17	39,027.57	31,222.05	1,851.94	33,073.99	1,986.01—	10,588.44
4,000.00	34,260,823.00	1.17	40,085.16	32,068.12	1,900.63	33,968.75	133.75	10,722.19
5,000.00	35,202,316.00	1.17	41,186.70	32,949.36	1,951.37	34,900.73	245.73	10,967.92
7,000.00	36,182,557.00	1.17	42,333.59	33,866.87	2,004.25	35,871.12	558.88—	10,409.04
8,000.00	37,202,774.00	1.17	43,527.24	34,821.79	2,059.33	36,881.12	233.88—	10,175.16
9,000.00	38,264,237.00	1.19	45,534.44	36,427.55	2,116.67	38,544.22	789.22	10,964.38
12,000.00	39,368,266.00	1.19	46,848.23	37,478.58	2,176.36	39,654.94	695.06—	10,269.32
13,000.00	40,516,228.00	1.19	48,214.31	38,571.44	2,276.72	40,848.16	38.16	10,307.48
15,000.00	41,709,542.00	1.19	49,634.35	39,707.48	2,342.41	42,049.89	175.11—	10,132.37
16,000.00	42,949,679.00	1.19	51,110.11	40,888.08	2,410.71	43,298.79	748.79	10,881.16
16,000.00	44,238,164.00	1.19	52,643.41	42,114.72	2,481.71	44,596.43	103.57—	10,777.59
18,000.00	45,576,578.00	1.19	54,236.12	43,388.89	2,555.50	45,944.39	44.39	10,821.98
20,000.00	46,966,560.00	1.19	55,890.20	44,712.16	2,632.17	47,344.33	344.33	11,166.31
23,000.00	48,409,808.00	1.19	57,607.67	46,086.13	2,711.80	48,797.93	202.07—	10,964.24
25,000.00	49,908,083.00	1.19	59,390.61	47,512.48	2,794.51	50,306.99	456.99	11,421.23
28,000.00	51,463,208.00	1.19	61,241.21	48,992.96	2,880.38	51,873.34	273.34	11,694.57
31,000.00	53,077,075.00	1.19	63,161.71	50,529.36	2,969.53	53,498.89	298.89	11,993.46
34,000.00	54,751,643.00	1.19	65,154.45	52,123.56	3,062.06	55,185.62	535.62	12,529.08
38,000.00	56,488,941.00	1.19	67,221.83	53,777.46	3,158.08	56,935.54	14.46—	12,514.62
41,000.00	58,291,072.00	1.19	69,366.37	55,493.09	3,257.72	58,750.81	700.81	13,215.43
45,000.00	60,160,215.00	1.19	71,590.65	57,272.52	3,361.09	60,633.61	633.61	13,849.04
53,000.00	62,098,627.00	1.25	77,623.28	62,098.62	3,468.31	65,566.93	183.07—	13,665.97
57,000.00	64,108,645.00	1.25	80,135.80	64,108.64	3,579.53	67,688.17	588.17	14,254.14
63,000.00	66,192,690.00	1.25	82,740.86	66,192.68	3,881.16	70,073.84	176.16—	14,077.98
82,000.00	68,353,272.00	1.25	85,441.59	68,353.27	4,006.79	72,360.06	13,739.94—	338.04

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DEFS. #44.

Millages Required to Pay Present and Proposed Refunding Securities.

Fiscal Year	For Refunding Bonds & TPCs Now Outstanding	For Proposed Issue of July 1, 1941	Total Millage Required
1941-42	5.67	1.03	6.7
1942-43	6.61	1.09	7.7
1943-44	6.61	1.09	7.7
1944-45	6.61	1.09	7.7
1945-46	6.61	1.09	7.7
1946-47	6.61	1.09	7.7
1947-48	7.08	1.17	8.25
1948-49	7.08	1.17	8.25
1949-50	7.08	1.17	8.25
1950-51	7.08	1.17	8.25
1951-52	7.08	1.17	8.25
1952-53	7.08	1.17	8.25
1953-54	7.08	1.17	8.25
1954-55	7.08	1.17	8.25
1955-56	7.08	1.17	8.25
1956-57	7.08	1.17	8.25
1957-58	7.56	1.19	8.75
1958-59	7.56	1.19	8.75
1959-60	7.56	1.19	8.75
1960-61	7.56	1.19	8.75
1961-62	7.56	1.19	8.75
1962-63	7.56	1.19	8.75
1963-64	7.56	1.19	8.75
1964-65	7.56	1.19	8.75
1965-66	7.56	1.19	8.75
1966-67	7.56	1.19	8.75
1967-68	7.56	1.19	8.75
1968-69	7.56	1.19	8.75
1969-70	7.56	1.19	8.75

Fiscal Year	For Refunding Bonds & TPCs Now Outstanding	For Proposed Issue of July 1, 1941	Total Millage Required
1970-71	7.56	1.19	8.75
1971-72	7.56	1.19	8.75
1972-73	7.56	1.19	8.75
1973-74	7.56	1.25	8.81
1974-75	7.56	1.25	8.81
1975-76	7.56	1.25	8.81
1976-77	7.56	1.25	8.81

DEFS. #45.

$687,884.23—4% Serial Bond Issue.

As a Possible Means of Financing Unrefunded Indebtedness.

Year	Outstanding Bonds	Principal	Interest	Total
1941-42	$687,884.23	$8,884.23	$27,515.37	$36,399.60
1942-43	679,000.00	9,000.00	27,160.00	36,160.00
1943-44	670,000.00	10,000.00	26,800.00	36,800.00
1944-45	660,000.00	10,000.00	26,400.00	36,400.00
1945-46	650,000.00	10,000.00	26,000.00	36,000.00
1946-47	640,000.00	11,000.00	25,600.00	36,600.00
1947-48	629,000.00	11,000.00	25,160.00	36,160.00
1948-49	618,000.00	12,000.00	24,720.00	36,720.00
1949-50	606,000.00	12,000.00	24,240.00	36,240.00
1950-51	594,000.00	13,000.00	23,760.00	36,760.00
1951-52	581,000.00	13,000.00	23,240.00	36,240.00
1952-53	568,000.00	14,000.00	22,720.00	36,720.00
1953-54	554,000.00	14,000.00	22,160.00	36,160.00
1954-55	540,000.00	15,000.00	21,600.00	36,600.00

Year	Outstanding Bonds	Principal	Interest	Total
1955-56	525,000.00	15,000.00	21,000.00	36,000.00
1956-57	510,000.00	16,000.00	20,400.00	36,400.00
1957-58	494,000.00	17,000.00	19,760.00	36,760.00
1958-59	477,000.00	17,000.00	19,080.00	36,080.00
1959-60	460,000.00	18,000.00	18,400.00	36,400.00
1960-61	442,000.00	19,000.00	17,680.00	36,680.00
1961-62	423,000.00	20,000.00	16,920.00	36,920.00
1962-63	403,000.00	20,000.00	16,120.00	36,120.00
1963-64	383,000.00	21,000.00	15,320.00	36,320.00
1964-65	362,000.00	22,000.00	14,480.00	36,480.00
1965-66	340,000.00	23,000.00	13,600.00	36,600.00
1966-67	317,000.00	24,000.00	12,680.00	36,680.00
1967-68	293,000.00	25,000.00	11,720.00	36,720.00
1968-69	268,000.00	26,000.00	10,720.00	36,720.00
1969-70	242,000.00	27,000.00	9,680.00	36,680.00
1970-71	215,000.00	28,000.00	8,600.00	36,600.00
1971-72	187,000.00	29,000.00	7,480.00	36,480.00
1972-73	158,000.00	30,000.00	6,320.00	36,320.00
1973-74	128,000.00	31,000.00	5,120.00	36,120.00
1974-75	97,000.00	33,000.00	3,880.00	36,880.00
1975-76	64,000.00	34,000.00	2,560.00	36,560.00
1976-77	30,000.00	30,000.00	1,200.00	31,200.00
Total		$687,884.23	$619,795.37	$1,307,679.60

Average Annual Contribution 36,324.43

Average Life .....22½ years

DEFTS. EX. 47.

Date	Name of Creditor	Total Claims Acquired	Actual Market Value (Asked Side)				Cash Paid		
			Ref. Bond	T. P. C's.	Amount	% of Par	Amount	% of Par	Ask
1937									
Oct. 18	Helen O'Connell	39,375.00	50	9	9,693.75	24.61	21,750.00	55.23	22
Oct. 19	Henry A. Thies	53,200.00	47	9	12,388.00	23.28	27,500.00	51.69	22
Oct. 19	Rybert Mtge. & Sec. Corp.	131,984.98	47	9	30,878.64	23.39	66,036.37	50.03	21
Oct. 19	Fiduciary Counsel, Inc.	8,000.00	47	9	2,240.00	28.00	8,000.00	100.00	35
Oct. 19	Fiduciary Counsel, Inc.	10,000.00	47	9	2,800.00	28.00	5,150.00	51.50	18
Oct. 19	Leo K. Steiner	66,780.00	47	9	16,270.20	24.36	34,502.00	51.66	21
Oct. 22	Craig-Allen & Co.	17,040.00	46	9	3,753.60	22.02	4,800.00	28.16	12
Oct. 22	Walter B. Rogers	26,252.50	46	9	6,061.82	23.09	7,500.00	28.57	12
Nov. 8	Ed. C. Wright	53,781.25	46	8	12,092.50	22.48	26,240.00	48.79	21
Nov. 10	M. Blair Cochran	3,840.00	46½	7½	873.00	22.73	1,277.09	33.25	14
Oct. 26	Vincent M. Doherty	780.00	46	7½	58.50	7.50	195.00	25.00	33
Nov. 12	Vincent M. Doherty	38,880.00	46½	7½	8,766.00	22.54	14,850.00	38.19	16
Dec. 3	Vincent M. Doherty	2,070.00	46½	7	144.90	7.00	848.70	41.00	58
Nov. 12	Joseph A. Schantz	49,700.00	46½	7½	10,552.50	21.23	15,750.00	31.69	14
Nov. 19	Julius A. Reif	6,590.00	46½	7½	1,469.25	22.29	2,000.00	30.34	13
Dec. 20	Chas. A. Krickl	10,346.64	46	6	2,220.79	21.46	3,760.00	36.34	16
1938									
Jan. 7	Lockwood Sims	14,200.00	46	6	2,852.00	20.08	5,800.00	40.84	20
Feb. 8	Homer J. Rhode	13,300.00	50	6	2,998.00	22.54	3,975.00	29.88	13
Mar. 28	Chas. A. Day & Co.	1,420.00	46½	5½	283.10	19.93	450.00	31.69	15
May 13	E. B. Murray	3,900.00	46	5¾	828.00	21.23	1,800.00	46.15	21
Jan. 18	Ellen Hopkins	16,564.80	48½	6¾	3,902.35	23.55	17,231.68*	—	
1937									
Nov. 22	Sarah McGuire	11,965.50	46½	7½	3,230.68	26.99	6,965.50	58.21	215
1938									
July 3	Robt. H. Cook, Inc.	2,742.50	46½	7½	595.68	21.72	1,100.00	40.10	184
July 8	Harrison-McCready & Co.	1,365.00	51½	7½	322.37	23.61	610.00	44.68	189
Aug. 11	A. B. Morrison & Co.	4,260.00	52½	7½	994.50	23.34	1,800.00	42.25	180
Aug. 12	A. B. Morrison & Co.	7,100.00	52½	8	1,680.50	23.66	2,950.00	41.54	175
Sep. 7	Florida Nat. Bk. & Tr. Co.	1,420.00	53¾	7½	337.50	23.76	520.00	36.61	154
Oct. 12	Robt. H. Cook, Inc.	240.00	60¼	7½	18.00	7.50	60.00	25.00	333
Dec. 15	Robt. H. Cook, Inc.	3,360.00	60¼	8	370.05	27.20	540.00	39.70	145

* Includes $13,000 of Bonds Delivered in Payment.

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DEFTS. EX. 47.

Name of Creditor	Total Claims Acquired	Actual Market Value (Asked Side)				Cash Paid			Excess of Cash Paid Over Asked Price	Refunding Bonds Purchasable at Current Market with Such Excess
		Ref. Bond	T. P. C's.	Amount	% of Par	Amount	% of Par	% of Asked Price		
.....	39,375.00	50	9	9,693.75	24.61	21,750.00	55.23	224.37	12,056.25	24,000.00
.....	53,200.00	47	9	12,388.00	23.28	27,500.00	51.69	221.98	15,112.00	32,000.00
ec. Corp.	131,984.98	47	9	30,878.64	23.39	66,036.37	50.03	213.85	35,157.73	76,000.00
Inc.	8,000.00	47	9	2,240.00	28.00	8,000.00	100.00	357.14	5,760.00	12,000.00
Inc.	10,000.00	47	9	2,800.00	28.00	5,150.00	51.50	183.92	2,350.00	5,000.00
.....	66,780.00	47	9	16,270.20	24.36	34,502.00	51.66	212.05	18,231.80	38,000.00
.....	17,040.00	46	9	3,753.60	22.02	4,800.00	28.16	127.87	1,046.40	2,000.00
.....	26,252.50	46	9	6,061.82	23.09	7,500.00	28.57	123.72	1,438.18	3,000.00
.....	53,781.25	46	8	12,092.50	22.48	26,240.00	48.79	216.99	14,147.50	30,000.00
.....	3,840.00	46½	7½	873.00	22.73	1,277.09	33.25	146.28	404.09	—o—
ty	780.00	46	7½	58.50	7.50	195.00	25.00	333.33	136.50	—o—
ty	38,880.00	46½	7½	8,766.00	22.54	14,850.00	38.19	169.40	6,084.00	13,000.00
ty	2,070.00	46½	7	144.90	7.00	848.70	41.00	585.71	703.80	1,000.00
.....	49,700.00	46½	7½	10,552.50	21.23	15,750.00	31.69	149.25	5,197.50	11,000.00
.....	6,590.00	46½	7½	1,469.25	22.29	2,000.00	30.34	136.12	530.75	1,000.00
.....	10,346.64	46	6	2,220.79	21.46	3,760.00	36.34	169.30	1,539.21	3,000.00
.....	14,200.00	46	6	2,852.00	20.08	5,800.00	40.84	203.36	2,948.00	6,000.00
.....	13,300.00	50	6	2,998.00	22.54	3,975.00	29.88	132.58	977.00	1,000.00
o.	1,420.00	46½	5½	283.10	19.93	450.00	31.69	158.95	166.90	—o—
.....	3,900.00	46	5¾	828.00	21.23	1,800.00	46.15	217.39	972.00	2,000.00
.....	16,564.80	48½	6¾	3,902.35	23.55	17,231.68*	—	—	—	—o—
.....	11,965.50	46½	7½	3,230.68	26.99	6,965.50	58.21	215.60	3,734.85	8,000.00
c.	2,742.50	46½	7½	595.68	21.72	1,100.00	40.10	184.66	504.32	1,000.00
& Co.	1,365.00	51½	7½	322.37	23.61	610.00	44.68	189.22	287.63	—o—
Co.	4,260.00	52½	7½	994.50	23.34	1,800.00	42.25	180.99	805.50	1,000.00
Co.	7,100.00	52½	8	1,680.50	23.66	2,950.00	41.54	175.54	1,269.50	2,000.00
Tr. Co.	1,420.00	53¾	7½	337.50	23.76	520.00	36.61	154.07	182.50	—o—
.....	240.00	60¼	7½	18.00	7.50	60.00	25.00	333.33	42.00	—o—
.....	3,360.00	60¼	8	370.05	27.20	540.00	39.70	145.92	169.95	—o—

Delivered in Payment.

1776a DEFENDANT'S EXHIBIT 57.

Filed Dec. 16, 1941, F. M. Hudson, Master.

City of Coral Gables, Florida.

City Commission
Joe Whitley, Mayor
Wallace A. Bell, Vice-Mayor
Andrew T. Healey
Thomas C. Mayes
W. Keith Phillips

A. B. Curry
City Manager
G. N. Shaw
Director of Finance

City of Coral Gables

Dade County, Florida

October 1, 1941.

General Information.

Incorporated in 1925 and re-incorporated in 1929 with substantially revised Charter (special charters in both instances) Coral Gables is a city of approximately 14½ square miles land area immediately adjoining and to the west and south of Miami. The southern portion of the City is on the shores of Biscayne Bay and a small portion of it lies on Biscayne Key, Soldier Key, and Ragged Keys, across the Bay.

Approximately 7 square miles of the area is subdivided, of which 4 square miles is entirely improved with streets and sidewalks and the remainder largely so improved. Approximately 4½ square miles is unsubdivided acreage land lying along the bay shore, and approximately 3 square miles is on the Keys.

The first subdivisions of the City were opened in 1921 and building was commenced in 1922. The 1930 Federal Census showed a permanent population of 5,697—subsequent permanent population figures are: State Census of 1935, 6,747; Federal Census of 1940, 8,294. Winter population has never been exactly determined, but it is estimated at from 13,000 to 14,000.

Highly restricted as to construction materials and methods, and as to architecture, use and building value, and with streets lined on both sides with parkways landscaped and maintained by the City, Coral Gables attracts a high class of residents, winter visitors, retired persons from other states, and business and professional people of the Miami area. Except in a few small subdivisions, zoning restrictions require minimum building value of $5,000, the minimums ranging upward to $17,500 in portions of the City.

The City operates its own bus system, with interurban line to downtown Miami, a nine hole golf course and a swimming pool. It owns, but leases for private operation, the country club. While as a whole, these operations do not return any large profit to the City, they are continued because of the influence upon growth and development.

Electricity and water are distributed by private interests. No gas facilities are available.

Public schools are the Coral Gables Elementary School, the Merrick Demonstration School, and the Ponce de Leon High School, under the supervision of a County School Board and supported by the County school tax levy and allocations of certain State revenue. In addition, Coral Gables is the home of the University of Miami, a parochial school, and five private schools.

Although principally a residential adjunct of the City of Miami, the business district of Coral Gables makes readily available commodities and services of nearly every necessary kind.

Operations.

Coral Gables' municipal operation is probably more extensive and complete than any other city of similar size. Its building department rigidly inspects all new buildings and major alterations. All building plans must be approved by its Supervising Architects, and the plans for all buildings open to the public must be approved by its Structural Engineer. The personnel and equipment of its Fire Department are maintained on the level necessary to secure Class "A" fire insurance rates. The Police Department maintains a constant radio partrol, both automobile and motorcycle, through direct connection with the City of Miami broadcasting facilities, and is now establishing an identification bureau with modern equipment. The department of Health inspects all food handling establishments, physically examines all food handlers, barbers and beauty culturists; makes periodic tests of water sources; examines dairies and dairy herds and milk treatment and distribution plants serving the city; employs a full-time registered nurse to check the health conditions in the schools. The Park Department cares for many miles of parkways, numerous plazas and parks, and their thousands

of trees and shrubs, and maintains and operates a recreation park and a diamond ball court. The City financially supports a library, with free borrowing privileges for all local residents. The Department of Public Service is equipped to maintain and even to construct its streets and other improvements, and to manufacture the city's street and traffic signs. 1219 street lights are in operation, and facilities are in place for many more when growth justifies lighting them.

Coral Gables operates under an elective Commission of five members, one of whom is the Mayor. The City Managers, in charge of all administrative functions, is appointed by the Commission.

General Tax Information.

Tax procedures of the City follow State Law. Assessment, at full value, is as of January 1, to support the fiscal year commencing the following July 1.

Collections open on November 1 of the year of the levy, and taxes are subject to the following discounts for early payment: during November, 4%; December, 3%; January, 2%; February, 1%.

Taxes become delinquent on April 1 of the year following that of the levy, and are offered for sale on the first Monday of June following the delinquency.

Delinquent taxes are subject to a 5% addition at tax sale, and thereafter draw interest at the following rates per annum: 18% first year following sale; 10% second year; and 8% thereafter until paid.

Tax sale certificates may be foreclosed or converted into tax deeds after the expiration of two years from date of the tax sale at which they were issued.

The City Commission, as an Equalization Board, reviews assessments on the second Monday in July each year, and as long thereafter as may be necessary. Assessments can not be changed after having been reviewed and confirmed by this board.

Other Charges and Fees.

Business and Occupational Licenses are due and payable October 1 each year, for a period of twelve months thereafter. Delinquent licenses may be subjected to an addition of 25% as penalty, and Court action upon them may result in costs and penalties.

Garbage Collection fees of $1.00 per can per month are payable quarterly in advance on the first of each January, April, July and October.

Motor vehicle inspections, for which the fee is 50c per vehicle, are required on or before March 15 and September 15 each year.

Financial History.

Based upon exaggerated boom time beliefs, Coral Gables real estate was assessed in 1926 at a value of $90,810,350, which was then assumed to be one-half the fair value of the land alone. On this predicate, and on the expectation of phenominal growth, during 1925, 1926 and 1927 bonds were issued and other obligations incurred to the approximate total of $8,750,000. The collapse of the real estate boom, and the subsequent sharp decline in realty value

and tax collectibility, placed the City in complete default by the end of 1930. Default continued as to both principal and interest, except for partial payments on interest and the retirement of a few obligations by purchase, until January 1, 1937, on which date the total indebtedness, including past due interest, was $11,182,606.36. As of that date, the constant negotiations for adjustment culminating in a refunding plan which is now approximately 94% complete. A municipal bankruptcy action is now in progress, intended to require a full completion of the refunding plan.

Summary of Refunding Plan.

Under the plan and agreement of January 1, 1937, the City issues refunding bonds to the extent of one-half of the outstanding principal, and tax participation certificates for the remaining one-half of principal and the unpaid interest to that date. The bonds are for a term of 40½ years, maturing July 1, 1977, bearing interest at the following rates per annum (coupons payable semi-annually): 2½% first three years; 3% next six years; 3½% next two years; 4% next five years; 4½% next ten years; 5% thereafter. Sinking Fund provisions are required after the first ten years. Provision is made for the periodic use of sinking fund money to retire refunding bonds by purchase, call, or payment. The bonds are callable at any interest date, at par. During the first ten years of the term, the City is required to purchase and retire, out of moneys realized from the sale or collection of delinquent taxes for the year 1935 and prior, $500,000 of the refunding bonds, in annual amounts ranging from $45,000 to $54,000. Special levies are required to make up any deficiencies in these annual amounts. The City has anticipated this schedule by the sale of most of its delinquent taxes, and the purchase of $462,516.98 of the refunding bonds. For

the service of the bonds, the creation of the sinking fund and secondarily for the retirement of the tax participation certificates as described below, the City agrees to levy annually a minimum millage, on full fair value of all property in its limits (except as to second series securities, including property otherwise exempt under the Homestead Exemption Amendment) as follows: 6 mills first five years; 7 mills next five years; 7½ mills next ten years; and 8 mills thereafter.

The tax participation certificates are not direct obligations of the City, having no maturity date and bearing no interest, and are in effect liquidating certificates. They are to expire by limitation on December 31, 1977, regardless of any unpaid balance existing at that time. They are in registered form, and on August 1 each year the registered holders as of July 1 of that year receive, by check, their pro rata share of any sums resulting from collection of the above minimum millages, in excess of the amounts necessary to pay the refunding bond interest and sinking fund requirements to that date. This is the sole source of payments upon these certificates.

Assessments—On Full Value Basis.

1650

	a	b	c	1	2	3	4	5
	Vacant Land*	Buildings and Underlying Land	Personal Property	Total Assessed Value	Less Assessed Value of Property Not Collectible within Fiscal Year	Assessed Value Collectible for Debt Service Purposes	Less Homestead Exemptions	Assessed Value Collectible for Operations and for recent debts
1936	$6,832,269	$15,124,904	$761,995	$22,719,168	$3,797,132	$18,922,036	$3,325,560	$14,596,476
1937	6,511,200	16,377,142	795,676	23,684,018	3,653,438	20,030,580	4,519,990	16,510,590
1938	6,396,934	17,881,349	877,023	25,155,307	3,486,272	21,669,135	5,281,179	16,387,956
1939	6,263,668	16,938,625†	867,584	24,069,877†	3,478,867	20,591,010	5,726,856	14,864,154
1940	6,023,090	18,099,915	941,689	25,064,694	3,244,038	21,820,661	6,515,367	15,305,294
1941‡	5,798,898	19,853,481	1,045,513	26,697,892	3,192,555	23,505,337	7,316,715	16,188,622

‡ (Anticipated)
Figures for 1941 are Assessor's first totals, and may be subject to minor and inconsequential revision.
* Diminishing amount due to use of land for building, and transferrance of value to the next column.
† Reduction due to revaluation and allowance of depreciation to old buildings.
Previous years are not shown, comparison being difficult because of different and varying assessment bases used.

Millages (On Full Value).

	1	2	3	4	5	6	7
		Refunding Issues			Other Debt Service		
	Operating & Miscellaneous	First Series	Second Series	Judgments	On Full Value	On Non-Exempt Value	Total
1936	14.	5.					19
1937	15.01	5.78	.12	1.09			22
1938	14.17	5.78	.1503	1.34371	.55599		22
1939	13.693	5.82	.08	1.39161	.80839	.207	22
1940	13.28412	5.77	.12	1.26661	.84339	.71588	22
1941	13.24222	5.77	.12	1.18779	.82221	.85778	22

For 1941 the following millages apply on property classification shown:

	City	County & School	Total
On Non-Homestead Exempt Value, and on Value of Homesteads in excess of $5000.	22.	15.225	37.225
On up to $5000. of Value of all Homesteads	8.1	3.350	11.450

Approximate County and School millage on Full Value—15,225, separately levied and collected.

Levies and Collections.

	Operating & Miscellaneous			Debt Service				
	Total	Collected During Fiscal Year	Per Cent Collected	Total	Collected During Fiscal Year	Per Cent Collected	Per Cent of Total Levy Collected During Fiscal Year	Percent of Total Levy Uncollected as of 7-1-41
1936	$268,658.26	$173,976.33	64.5%	$113,595.08	$78,408.91	69%	66.03%	2.29%
1937	283,942.55	218,720.80	77.2%	165,004.32	137,757.73	80.5%	78.29%	9.60%
1938	277,965.71	220,255.63	79.24%	196,965.34	162,702.18	82.60%	80.63%	12.88%
1939	248,137.97	195,463.08	78.77%	198,275.08	161,360.30	81.38%	79.03%	14.34%
1940	256,417.79	204,340.89	79.69%	200,588.47	171,072.64	85.28%	82.15%	17.85%
1941*	271,463.97	In Progress		210,913.35	In progress			In progress

Summary of 1941 Tax Assessment Roll for Fiscal Year 7-1-41 to 6-30-42, and Taxes for 1-1-37 Refunding Bonds and Tax Participation Certificates.

Bold-face figures are actual; light-face figures are from Estimate and Forecast on which refunding was predicated.

		$5,500,000
1.	Vacant Land	5,798,898
		18,441,450
2.	Buildings and Underlying Land	19,853,481
		860,640
3.	Personal Property	1,045,513
4.	Total Value subject to levy for 1-1-37 First Series Bonds and Tax Participation Certificates	24,852,090 26,697,892
5.	Less: Valuation of lands not expected to be currently collectible as to taxes	3,192,555
6.	Total valuation of property upon which taxes for 1-1-37 First Series Bonds and Certificates may be expected to be collected within fiscal year of levy	23,505,337
7.	Less: Valuation subject to Homestead Exemption	7,316,715
8.	Total valuation of property upon which taxes for 1-1-37 Second Series Bonds and Certificates may be expected to be collected within fiscal year of levy	16,188,622
9.	Estimated. Currently collectible levy for First Series Bonds and Certificates (5.77 mills on Item 6)	135,625.79

10.	Estimated. Currently collectible levy for Second Series Bonds and Certificates (.12 mills on Item 8)	1,942.63
11.	Estimated. Delinquent taxes to be held for account of and paid to bonds and certificates when collected	18,788.85
12.	Total levy for 1-1-37 Bonds and Tax Participation Certificates	$149,112.54 156,357.27

The interest requirement for the year being $117,795.60, the cash remainder available for tax participation certificates is estimated at $19,772.83, to which will be added any receipts of applicable delinquent taxes, estimated arbitrarily at $7500.

The City of Coral Gables.

Statement of Operations of Issue of 1-1-37 Fund, for Service of Refunding Bonds and Tax Participation Certificates 7-1-37 to 6-30-41 and Estimated 7-1-41 to 6-30-42.

Bold-face figures are actual; light-face figures are from Estimate and Forecast on which refunding was predicated.

	7-1-37 to 6-30-40	7-1-40 to 6-30-41	Total through 6-30-41	Estimated 7-1-41 to 6-30-42
Tax Levies for Issue of 1-1-37 Refunding Securities	$413,304.58	$145,186.03	$558,490.61	$149,112.54
	429,925.93	**146,848.91**	**576,774.84**	**156,357.27**
Collections of Current Taxes	360,610.07	127,438.72	488,048.79	131,321.58
	353,231.55	**129,506.31**	**482,737.86**	**137,568.43**
Interest on 1-1-37 Refunding Bonds	334,200.00	122,400.00	456,600.00	120,600.00
	325,788.10	**119,320.14**	**445,108.24**	**117,795.60**
Balance available for Tax Participation Certificates	26,410.07	5,038.72	31,448.79	10,721.58
	27,443.45	**10,186.17**	**37,629.62**	**19,772.83**
Collection of Delinquent Taxes Levied for Refunding Securities	14,819.90	7,615.66	22,435.56	7,500.00
	24,002.44	**7,615.66**	**31,618.10**	**7,500.00**

	41,229.97	12,654.38	53,884.35	18,221.58
Total paid to Tax Participation Certificates....	**51,325.47**	**17,801.83**	**69,127.30**	**27,272.83**
	$6.00	$1.846	$7.847	$2.653
Rate of Payments per $1000. of Certificates....	**7.47**	**2.597**	**10.067**	**3.97**
Delinquent Taxes on hand payable to Tax Participation Certificates when collected.....	.....	.....	49,143.76	60,324.67
	.....	.....	**63,497.65**	**75,725.82**
Value of Uncollected Taxes per $1000. of Certificates	.....	.....	$7.157	$8.785
	.....	.....	**9.247**	**11.028**
Total Paid and Accrued Benefits to Tax Participation Certificates	.....	.....	103,028.11	132,430.60
	.....	.....	**132,624.95**	**172,125.95**
Rate of Total Paid and Accrued Benefits per $1000. of Certificates	.....	.....	$15.004	$19,285
	.....	.....	**19.314**	**25.065**

The above statement covers not only the $3,765,500 of Bonds and $6,577,081.57 of Tax Participation Certificates actually issued in exchanges, but also the $161,019.97 of Bonds and $277,632.11 of Certificates held for exchange for presently Unrefunded Bonds. The interest and payments on these unissued bonds and certificates are held in a cash reserve, amounting to $19,724.94 for interest and $2,794.91 for certificate reduction payments.

The figures for Tax Participation Certificate payments for each period include the amounts accrued in such periods but not actually paid the following August 1.

The 1-1-37 refunding plan and the City's other estimates for the future have been based on an estimated growth rate of 3½% per annum. Since it was adopted, this estimated growth has been confirmed by the experience of the ten years from 1930 to 1940. The population in 1930 was 5,697, and the addition of the theoretical 3½% per annum to that beginning would have produced for 1940 a population of 8,033. The Federal Census for 1940 showed 8,294, the actual growth exceeding the theoretical by only a fraction of 1%.

It is not assumed that this growth rate will be maintained uniformly each year. In the decade 1930-1940, during the first half of the period the City's growth was practically at a standstill, so far as new buildings and actual total value was concerned, and the entire advance was made during the second five years. Such cycles will no doubt be repeated several times during the remainder of the life of the refunding securities. The arrangement of the refunding securities into two classes, one fixed obligation with a predetermined annual requirement, and the other a contingent obligation, without definite requirement for any year, was for the purpose of providing sufficient

elasticity in the plan to safeguard against default in the low points of such cycles.

The values of the 1941 assessment roll are approximately two years ahead of the 1937 forecast, being only slightly less than those predicated for 1943. The more-than average building of the past five years has already created a cushion against a slack period in the next decade.

Registration of Tax Participation Certificates.

Annual reduction payments, or dividends, on Tax Participation Certificates are made *to the persons or agencies registered on the City's books as of July 1 preceeding the payment on August 1.* Certificates should be re-registered promptly upon acquiring them. For this purpose, the certificates should be forwarded to the Director of Finance, City of Coral Gables, Florida, together with evidence of sale by the person or agency shown upon them as immediately preceding owner. Evidence of proper sale may be on "assignment separate from bond" form, and may consist of a single such form bearing the numbers and amounts of a group of certificates secured from a single vendor. Signature of vendor should be guaranteed by a bank or stock exchange firm.

Certificates to be re-registered to executors, administrators, or heirs, should be accompanied by properly certified copies of documents evidencing the authority for such transfers.

The City of Coral Gables.

Statement of Indebtedness as of July 1, 1941.

1. Refunding Bonds of Issue of January 1, 1947:

	Amount Issued	Purchased and Canceled	Outstanding	
a. First Series, Supported by Levy on All Value—2½%-5% (Number prefix "D"....	$3,878,170.20	$133,170.20	$3,745,000.00	
b. Second Series, Supported by Levy on Non-Homestead-Exempt. Value—2½% - 5% (Number prefix "SB").....	82,346.78	61,846.78	20,500.00	
	3,960,516.98	195,016.98		$3,765,500.00

(Now owned by City in anticipation of Annual Cancellation Requirements through July 1, 1947, $267,500.00. Balance of such requirement $304,983.02.)

2. Original Bonds Outstanding Unexchanged:

	Issue	Int. Rate	Amount Issued	Outstanding	
				Immature	Past Due
a.	12-1-25	5½%	550,000.00	38,000.00	6,000.00
b.	4-1-26	5½%	450,000.00	7,000.00	7,000.00

c.	7-1-26	6%	1,337,000.00*	.....	14,000.00	
d.	1-1-27	6%	4,436,000.00**	136,000.00	71,000.00	
e.	6-1-28	6%	157,000.00	.....	3,000.00	
f.	6-15-28	6%	873,000.00	5,000.00	25,000.00	
g.	6-1-29	6%	157,000.00	.....	5,000.00	
h.	7-1-29	6%	195,000.00	.....	.....	
i.	1-1-30	6%	96,000.00	.....	1,000.00	
k.	7-1-30	6%	150,000.00	3,000.00	.....	
			8,401,000.00	189,000.00	132,000.00	321,000.00

* After refunding $450,000 by issues marked "e", "g", and "k". Original amount $1,787.000.
** After refunding $96,000 by issue marked "i". Original amount $4,532,000.

3. Judgments on Bonds, and Mandatory Levy Writs thereon:

	Original Amount	Balance Unpaid	
a. Augustus T. Ashton	13,793.71	6,490.94	
b. Fiduciary Council, Inc.	130,878.21	90,204.46	
c. Lois Harmon	7,278.90	3,479.26	
d. W. J. Noel	19,378.08	9,141.02	
e. C. J. Root	52,578.22	43,239.91	
f. G. E. Vallette	8,646.37	5,602.07	
	232,553.49		158,157.66

4. Miscellaneous Judgments:

	Original Amount Unpaid	
E. B. Connolly	765.28	
Parker Maxwell	274.65	
		1,039.93

5. Unrefunded Interest on Original Issues, an Interest Accrued on Judgments.. 207,697.11

6. Total Bond Debt, Judgments, and Interest thereon $4,453,394.70

Contingent Debt as of July 1, 1941.

Tax Participation Certificates:

	Amount Issued	Payments	Remaining Face Value
First Series (Number Prefix "TPC") Payable from Levies on All Value	$6,458,201.45	$64,988.38	$6,393,213.07
Second Series (Number Prefix "SC") Payable from Levies on non-Homestead Exempt Value	118,880.12	1,343.97	117,536.15
	6,577,081.57	66,332.35	6,510,749.22

The above certificates are Liquidating Certificates as described in the preceding Summary of the Jan. 1, 1937 Refunding Plan, bear no interest, and have no maturity date. They receive annually the balance of the year's receipts from Debt Service Levies required by the plan after payment therefrom of interest and sinking fund requirements of the refunding bonds.

Overlapping Debt.

Coral Gables property is also subject to the lien of County and School Bonds, estimated to apply to such property to the extent of $1,056,997. These bonds are serviced and paid from County and School taxes levied separately and in addition to City taxes.

The City of Coral Gables.

Budget for Year 7-1-41 to 6-30-42.

City Operations:		
Administration, Finance, Legal, Judicial, etc.	$45,660.25	
Parks & Parkways	52,228.00	
Waste & Garbage Disposal	26,010.30	
Streets & Sewers	19,738.55	
Street Lighting	34,000.00	
Health	4,930.00	
Fire and Police	88,310.00	
Recreation	5,209.00	
		$276,086.10
Miscellaneous:		
University of Miami	25,000.00	
Library	6,000.00	
Extraordinary Legal Expense (Debt Adjustment Suit)	10,000.00	
Miscellaneous Contingent Reserve	28,247.19	
		69,247.19
		$345,333.29
Debt Service and Debt Service Expenses		194,114.40
		$539,447.69
To be supported by:		
Cash on Hand and Receivable	$16,500.00	
Licenses, Business and Occupational	27,000.00	
Garbage Collection Fees	28,500.00	
Permits	15,700.00	
Fines and Forfeiture	7,750.00	
Auto Inspections	6,750.00	
Other Departmental Income	14,350.00	
Miscellaneous Incomes	8,338.00	

Profit from operation of Bus System, Gold Course, and Venetian Pool	12,772.00	
1941 Taxes (Net Collectible)	401,787.69	
		$539,447.69

Building Permits.

	Number of New Building	Permit Value New Building Only	Permit Value Total Including Repairs
1925	*	*	$22,224,900
1926	*	*	13,402,012
1927	134	*	2,602,900
1928	40	*	864,340
1929	26	*	973,929
1930	10	*	286,300
1931	6	$35,250	140,919
1932	3	42,500	71,130
1933	9	85,000	164,393
1934	6	55,000	477,554
1935	53	454,050	496,677
1936	126	1,262,875	1,459,075
1937	121	1,030,500	1,223,495
1938	138	959,802	1,087,450
1939	201	1,077,885	1,195,998
1940	251	1,517,556	1,750,645
1941 thru Sept. 30	137	1,011,681	1,251,986

* Information not available.

The relatively enormous figures for the early years reflect the exaggerated costs and values of boom times. At the close of 1934, when building permits totalled $41,208,377, an appraisal of improved realty by two impartial experts, acting separately, placed the then value at approximately $14,900,000.

The City of Coral Gables.
Receipts and Disbursements Fiscal Year 1940-41.
Operating Funds.

	Total	General Fund	Utilities Fund
Cash on Hand July 1, 1940	$30,356.92	$18,298.23	$12,058.69
Receipts:			
1940 Taxes	$208,520.46	$208,520.46	.....
Delinquent Taxes	18,183.63	18,183.63	.....
Licenses	26,979.34	26,979.34	.....
Departmental Income	74,681.65	74,681.65	.....
Transportation	94,461.57	.....	94,461.57
Golf Course	13,827.04	.....	13,827.04
Venetian Pool	9,232.33	.....	9,232.33
Account Receivable (Net)	1,556.57	2,052.80	496.23*
Interest on Securities	16,827.27	16,827.27	.....
Coliseum Note	2,500.00	2,500.00	.....
Prepaid Income (Net)	1,131.21	1,392.00	260.79*
Other Miscellaneous Receipts (Net)	544.93	344.88	200.05
Debt Service Expense from D. S. Funds	1,442.71	1,442.71	.....
Reserve for Depreciation (Purchased Two Buses)	9,854.29	.....	9,854.29
Payment on Loan of Previous Years	.....	5,344.49	5,344.49*
Total Receipts	$510,099.92	$376,567.46	$133,532.46

Disbursements and Commitments:			
Operating City	$269,478.20	$269,478.20	.....
Motor Equip. & Machinery Purchased	27,249.38	16,980.33	$10,268.05
Education	31,656.76	31,656.76	.....
Publicity	3,964.88	3,964.88	.....
Permanent Properties	4,737.67	4,737.67	.....
Extraordinary Legal	8,483.17	8,483.17	.....
Equipment Notes	8,930.05	8,930.05	.....
Miscellaneous Appropriations	17,764.14	17,764.14	.....
Transportation	88,036.78	.....	88,036.78
Golf Course	9,895.23	.....	9,895.23
Venetian Pool	11,571.34	.....	11,571.34
Country Club	405.93	.....	405.93
Accounts of Previous Year Paid	10,945.35	10,055.95	889.40
Paid on Subsequent Years Appropriation	17,794.88	17,794.88	.....
Total Expenditures	$510,912.76	$389,846.03	$121,066.73

Less Commitments:			
Current Accounts Payable	$11,933.93	$10,585.52	$1,348.41
Equipment Notes Payable	5,964.43	5,964.43	.....
Total Cash Disbursements	$493,014.40	$373,296.08	$119,718.32
Cash on Hand July 1, 1941	$17,085.52	$ 3,271.38	$13,814.14
Plus: Prepaid on Subsequent Year	17,794.88	17,794.88	.....
Less: Prepaid Income	1,131.21	1,392.00	260.79‡
Current Accounts Payable	11,933.93	10,585.52	1,348.41
Unappropriated Cash July 1, 1941	$21,815.26	$9,088.74	$12,726.52

* Net Charge or Disbursement.
‡ Addition.

The City of Coral Gables.
Receipts and Disbursements Fiscal Year 1940-41.
Debt Service Funds.

	Total	Refunding Bonds	Mandatory Levy Fund	Debt Service Expenses
Cash Balance July 1, 1940	$ 3.29	$ .20	$ 3.09	.....
Receipts:				
1940 Taxes	$172,907.12	$129,506.31	$28,019.33	$15,381.48
1939 Taxes	4,985.12	3,588.02	908.18	488.92
1938 Taxes	2,805.30	2,115.11	516.95	173.24
1937 Taxes	1,306.00	1,098.53	207.47	.....
Interest on Delinquent Taxes	1,006.09	813.80	192.29	.....
Total Receipts	$183,012.92	$137,121.97	$29,847.31	$16,043.64
Disbursements:				
Interest	$119,320.14	$119,320.14	.....	.....
Tax Participation Certificates	17,801.83	17,801.83	.....	.....
Bond Purchased under Agreement	2,000.00	.....	.....	2,000.00
Debt Service Expense	14,043.64	.....	.....	14,043.64
Total Disbursements	$153,165.61	$137,121.97	.....	$16,043.64
Cash Balance July 1, 1941	$29,847.31	.....	$29,847.31	.....

Additional or more detailed information may be had by addressing G. N. Shaw, Director of Finance, Coral Gables, Florida. Others who may be addressed for specific information or services:

City Asessed Values:
G. A. Bowen, Tax Assessor, Coral Gables, Fla.
County Assessed Values:
J. N. Lummus, Jr., Dade County Tax Assessor, Court House, Miami, Fla.
City Tax Collections, City Licenses and other City Charges:
G. N. Shaw, Director of Finance, Coral Gables, Fla.
County Tax Collections, County Licenses, Motor Vehicle Titles and Licenses:
Hayes Wood, Dade County Tax Collector, Court House, Miami, Fla.
Delinquent Taxes, both City and County (latter includes all property taxes except City):
E. B. Leatherman, Clerk of Circuit Court, Court House, Miami, Fla.
Recording of Deeds, Mortgages, etc.
E. B. Leatherman, as above.
Public School Information:
James T. Wilson, Superintendent of Public Instruction, 275 N. W. 2nd St., Miami, Fla.
Registration as Electors, City Elections:
G. N. Shaw, as above.
County, State and National Elections:
Carl Holmer, Jr., Dade County, Supervisor of Registration, Court House, Miami, Fla.

Applications for Homestead Exemption must be made each year to *both* the City and County Tax Assessors, named above. Applications are as of January 1, each year, and must be filed before April 1. Forms and information may be secured from the Assessors.

On May 8, 1942 Transcript of Proceedings before Special Master on Special Issue was filed in words and figures following:

In the United States District Court in and for the Southern District of Florida. Miami Division.

In the Matter of
The City of Coral Gables, Florida.
In Bankruptcy No. 1867-M.

This Cause came on for hearing upon Motions to Dismiss filed by certain creditors herein, before the Honorable F. M. Hudson, Special Master herein, at 9:30 A. M. on the 31st day of January, A. D. 1941, in the offices of Hudson & Cason, 830 Seybold Building, Miami, Florida.

There was present at said hearing on behalf of the Petitioner the City of Coral Gables, Mr. Morton B. Adams, City Attorney; Mr. Ira C. Haycock; and Mr. D. H. Redfearn, of the law firm of Redfearn & Ferrell, of counsel for the City; and Mr. G. N. Shaw, City Clerk. There was also present, Mr. W. Terry Gibson, of West Palm Beach, Florida, on behalf of Fiduciary Counsel, Inc., a creditor; and Messrs. Edwin M. Clarke and Olin Watts, of the law firm of Jennings & Watts, of Jacksonville, Florida, on behalf of C. J. Root, a creditor.

Thereupon, the following proceedings were had:

Mr. Clarke:

May it please the Court, I would like to ask that the Reporter show that this hearing was adjourned from a hearing when creditors represented by Mr. Berry, Mr. Warren and Mr. Lea were present, and that this hearing was adjourned to this date.

Mr. Gibson:

Isn't it a fact that at that hearing all creditors who have been in attendance at any hearing were represented?

Mr. Clarke:

I think that's correct.

Mr. Gibson:

Constituting all creditors who have been attendant at any hearings, and represented by counsel.

Mr. Clarke:

If it please the Court, I should like to offer in evidence a certain stipulation and agreed statement of facts between the City and C. J. Root, signed by counsel for the City and for Mr. Root.

The Master:

This seems to be a Stipulation signed by counsel on both sides, and I suppose there is no objection.

Mr. Adams:

No objections.

Mr. Redfearn:

It is intended merely to shorten the record and save introducing all those documents referred to in there.

Mr. Gibson:

It had better be announced in the record that the stipulation referred to and the facts, and those facts in our Answer referring to that Special Issue, for the purpose of this hearing are admitted to be true.

Mr. Adams:

Those documents referred to therein are admitted to be true.

Mr. Redfearn:

In other words, we will make the same stipulation with reference to Mr. Gibson's clients, as to his exhibits.

Mr. Gibson:

What I'm getting at is that we haven't gone to the trouble of getting Exselsen up here.

Mr. Adams:

I am not stipulating as to anything about Exselsen.

Mr. Gibson:

You have no objection to stipulating that he was acting for the City as its authorized agent?

Mr. Adams:

I am not stipulating to that, because he had a limited authorization, and I wouldn't stipulate that he was authorized.

Mr. Gibson:

Well, then, when we get in the argument, if there are any facts that have to be proved by testimony, I have a right to do it, because I understood there was no question about that. In other words, I have been traveling under a misapprehension. It might not be important. It might not be important, but if it becomes important, I mean, if the establishment of any facts of that type become important, I will just have to have the right to establish them, because I have been traveling on the assumption there will be no disagreement as to that.

The Master:

You will have that right.

(Thereupon, the said Stipulation was marked in evidence as Special Issue Exhibit "A".)

Mr. Clarke:

If it please the Court, I should like to announce on behalf of C. J. Root that this hearing is held pursuant to the allegations of the following pleadings, and the motions as follows: the Answer of C. J. Root, and the motion and Petition of C. J. Root, filed October 5th, 1940; The proof of Claim and Rejection of Plan of Composition filed August 27, 1940; and the Objection of C. J. Root to the entry of the Stay Order filed July 26, 1940. Would you care to announce your pleadings, Mr. Gibson?

Mr. Adams:

May I ask this question, on that announcement? You refer to your proof of claims and objections filed in August, and to your objections to the entry of the stay order, merely for the documents which are your exhibits to those pleadings?

Mr. Clarke:

And also for the allegations therein of fact, because by the Answer and Motion there those allegations were made a part of the Answer and Motion themselves.

Mr. Adams:

All right.

Mr. Gibson:

As to Fiduciary Council, the argument is addressed to that portion of the answer and objections of Fiduciary Council filed September 11, 1940, constituting a special issue, and not addressed to that portion of it going to the case in main.

Mr. Clarke:

Now, if it please the Court, on behalf of C. J. Root, I should like to offer in evidence a certain copy of Judgment

which is attached in the pleadings in this case to the objection of C. J. Root to Entry of Stay Order, marked Exhibit "B" to that pleading. That pleading was filed on July 26, 1940. I may state that each one of these pleadings that I am offering is covered by the stipulation that has been entered into.

Mr. Adams:
That's right.

The Master:
Is there any objection?

Mr. Adams:
No, sir.

The Master:
This will be Special Issue Exhibit "B". It is admitted.

(Said instrument was marked in evidence as Special Issue Exhibit "B").

Mr. Clarke:
I should further like to offer in evidence a certain schedule of bonds and coupons filed in evidence, and which is attached to the same pleading as Exhibit "A" thereto.

The Master:
That will be admitted.

(Said instrument was marked in evidence as Special Issue Exhibit "C".)

Mr. Clarke:
Next I offer in evidence a certain copy of affidavit of

proof, attached to the same pleading and marked Exhibit "C" thereto.

The Master:
That will be admitted.

(Said instrument was marked in evidence as Special Issue Exhibit "D").

Mr. Clarke:
I would like to offer in evidence copy of Alternative Writ of Mandamus, dated August 16, 1937, which is attached to the Stipulation today filed as Special Issue Exhibit "A" as Exhibit 1 to that Stipulation.

The Master:
It is admitted.

(Said instrument was marked in evidence as Special Issue Exhibit "E".)

Mr. Clarke:
Next I would like to offer in evidence Exhibit "D" attached to the Objection of C. J. Root to the Entry of Stay Order, filed July 26, 1940, which is a certified copy of a Resolution No. 1783 adopted by the Commission of the City of Coral Gables on January 18, 1938, and embodying copies of an agreement and stipulation therein mentioned.

The Master:
It is admitted.

(Said instrument was marked in evidence as Special Issue Exhibit "F".)

Stipulation: It is agreed between counsel that the copy of the agreement and stipulation embodied in the Resolution that has been admitted here as Special Issue Exhibit "F" shall be considered to the same effect as the original, and there shall be no necessity for producing the original stipulation and agreement.

Mr. Clarke:
I should like to offer in evidence a copy of Order for the issuance of peremptory writ of mandamus, and approving and confirming a stipulation dated May 19, 1938, and attached to the same pleading, the Objection of C. J. Root to Entry of Stay Order as Exhibit "E" thereto.

The Master:
It is admitted.

(Said instrument was marked in evidence as Special Issue Exhibit "G".)

Mr. Clarke:
I should like to offer in evidence Exhibit "F" attached to the same pleading, being a copy of the Peremptory Writ of Mandamus issued pursuant to the Order just mentioned.

The Master:
It is admitted.

(Said instrument was marked in evidence as Special Issue Exhibit "H".)

Mr. Clarke:
I should like to have the Master swear Mr. Olin Watts, and announce for the record that the testimony that he shall give is related to agreements made with the City through its agent, Mr. Carl L. V. Exselsen, and Mr. Exselsen, as counsel for both sides knows, is out of the city at this time.

1784 OLIN WATTS was thereupon called as a Witness on behalf of Movant, C. J. Root, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Clarke:

Q. Will you state your name, please, and your connection with this case?

A. My name is Olin Watts, and I am a member of the law firm of Jennings & Watts, which firm represents C. J. Root in this cause.

Q. Did you have any connection with the negotations between the City and Mr. Root during the year 1937, and particularly during the latter portion of that year?

A. I did.

Q. What connections did you have with those negotations?

A. I handled all, or substantially all of the negotations with Mr. Exselsen, whom I understood to be representing the City, with reference to all of the bonds and other indebtednesses such as interest coupons, held by Mr. Root, of the City of Coral Gables. May I make it clear: I don't mean Mr. Root was of the City of Coral Gables, but I mean they were City of Coral Gables obligations.

Q. Will you state whether or not at substantially the same time you were in correspondence with the City officials and the city attorney? That is, during the year 1937.

A. Yes; I had considerable correspondence with Mr. Morton B. Adams, the city attorney for the city of Coral Gables. The main correspondence with Mr. Adams, of course, was regarding the suit then pending by Mr. Root against the City, which was subsequently terminated in a judgement and the issuance of an alternative writ of mandamus.

Q. Were your negotations with respect to the issues in the pleadings that are now relied upon by Mr. Root—were those negotations had exclusively with Mr. Exselsen as to the settlement agreements?

A. I am reasonably certain that so far as the settlement is concerned, the negotations were had exclusively with Mr. Exselsen. It may be that there were some conversations, in fact I think there were some conversations with Mr. Adams from time to time during the progress of the cause, but I would say certainly, primarily the negotiations were with Mr. Exselsen, and I believe it would be fair to say exclusively with him, so far as the settlement agreements were concerned, except in this regard, that when the agreement was completed and the documents were prepared, Mr. Adams and I discussed those, of course, and he went over all those.

Q. Were those negotations the ones that culminated in part, at least, in the reaching of the agreement dated December 1, 1937, which has been introduced along with the companion stipulation and the Resolution 1783 of the City Commission?

A. Yes.

The Master:

Wait a minute; identify that exhibit, please.

Q. Being Special Issue Exhibit "F".

A. Yes.

Q. Will you state whether or not at the same time in the negotations with respect to the agreement just mentioned, there was any agreement or understanding with the City's representative, Mr. Exselsen, as to any other bonds held by Mr. Root?

Mr. Adams:

Now, if Your Honor please, we object to that. The record shows that the negotations culminated in written

instruments that were authorized to be executed and were executed, and they speak for themselves, and there has been no showing of authority on the part of Mr. Exselsen to make any agreement with reference to any securities.

The Master:
Objection overruled.

Mr. Haycock:
Do you mean by that, other bonds than those referred to in the agreements?

Mr. Clarke:
Yes; other than those bonds referred to in the agreements.

A. Well, there were a number of telephone conversations and several conferences with Mr. Exselsen. As a matter of fact, he was quite insistent that Mr. Root enter into some negotations because an alternative writ had been issued on the judgement. As the record will show, the suit culminating in the judgment was very hotly contested by the City. The validity of the bonds was in question, and Mr. Root was not extremely anxious, in view of the attitude of the City to negotiate with Mr. Exselsen for the City. Many propositions were made before this agreement was finally arrived at. In all if these negotations, it was not only understood, but it was one of the conditions for the agreement or any agreement that might be reached, that all of Mr. Root's bonds were being considered and must be considered. Now, the agreement covers the bonds that had been reduced to judgment, together with all bonds that had matured up to the time of agreement. In addition to those bonds, Mr. Root held and still holds bonds Nos. 146-150, inclusive, issued December 1, 1940, of the same issue. All of these bonds I speak of are of the same issue as bonds identified in the agreement.

Q. Will you excuse me, there? You said, "issued December 1, 1940".

A. I'm sorry; correct that, please. The maturity date is December 1, 1940, of the particular bonds I have just identified. All of these bonds are of the same issue, that is, the issue identified in the agreement. And Mr. Root also held bonds Nos. 166-170, inclusive, maturity date, December 1, 1941; bonds 186-190, inclusive, maturity date, December 1, 1942; bonds numbered 206-210, inclusive, maturity date, December 1, 1943. These bonds had attached to them unmatured coupons, also.

Q. What was the first coupon attached? Or may I ask it this way; was it all of the coupons that were not covered by the judgment that were originally attached to those bonds?

A. That is correct.

Q. Were any agreements made, or commitments made by the City or Mr. Root, or both, as to these bonds which are not identified in Exhibit "F", being the Resolution 1783, and the agreement?

A. Yes. I was just coming to that. As I say, during all these negotiations, Mr. Exselsen insisted we consider all of the securities held by Mr. Root. When the agreement was made, it covered specifically, of course, the bonds and the coupons which were not in judgment but matured, and the indebtednesses evidenced by the judgment. Mr. Exselsen insisted, and Mr. Root agreed that when the bonds not covered by the agreement matured in due course, an agreement identical with the one entered into with respect to the matured bonds and coupons would be entered into under the same plan and on the terms as the ones which were included in the agreement. That was one of the considerations for the execution of the agreement, and it was thoroughly understood all the way through the negotiations.

Q. Was that made on behalf of the City—was that agreement made on behalf of the City as well as on behalf of Mr. Root?

A. Yes; and the City was the one insisting on that, and Mr. Root agreed.

Mr. Haycock:

May I ask if that agreement was ever reduced to writing?

A. No, sir.

Q. Did that proposed agreement as to these bonds contemplate a reduction of interest and extension of maturity dates, the interest to be reduced to 4% and the maturity dates to be extended over a twelve-year period?

A. It did; and it contemplated, as you stated, the reduction of the interest rate to 4%, which is the same interest rate that the agreement bears with respect to the bonds that were covered by the agreement specifically, and the spread of the payments over a twelve-year period, the same as the bonds which were included in the agreement with the judgment indebtedness.

Mr. Adams:

Your Honor, I think at this point we should get an objection in as to these bonds that have not matured, and these coupons not matured, and that is, we move to strike all Mr. Watts' testimony concerning these bonds and coupons not covered by the agreements as they have no force and effect and are not an issue in this cause, and there is no authority here on these representations of the City to vary or alter or amend any of their bond agreements, and it seems to be an attempt on the part of the City and Mr. Watts and Mr. Root to do that. There was a bond, not yet matured, in which they entered into an oral contemporaneous agreement seeking to alter, vary and amend that agreement, and it is not in issue in this case.

and the testimony should be stricken as not binding upon this Court in a bankruptcy hearing. And, on the further ground that the City had no authority under its charter to make any such verbal agreement relating to a written contract that is outstanding. There is no proof of authority in Exselsen, as the negotiating agent of the City, and there is no charter authority in the City to make any verbal or written commitments as to future litigation.

The Master:
Until it is shown that Mr. Exselsen was the agent of the City, this testimony would certainly be inadmissible, but I am assuming that a showing will be made. I kind of believe that the whole testimony is inadmissible, but I will reserve my ruling on that.

Q. Will you state whether or not in the negotiations and at the time of the making of these agreements, there were any representations or agreements on behalf of the City with respect to future litigation between Root and the City, and whether there were any commitments by the City as to such future litigation and by Mr. Root as to such future litigation?

Mr. Haycock:
We renew the same objection as to that question.

The Master:
The same ruling.

A. Mr. Exselsen spoke on several occasions of the possibility of the City going into bankruptcy under the Wilcox Act;—not under the Wilcox Act, but under the second Bankruptcy Act. That second bankruptcy act, as I recall it, and as enacted in the law, became the law about August 16, 1937. Shortly after that is when they first started

very strong negotiations with us, and respecting settlement. Mr. Exselsen on one occasion went so far as to say—I do not want to say positively that he said the Petition had been prepared, or whether he said it was being prepared, but he did say that the pleadings were being worked on, or something of like effect; he said, and it was understood, that if Mr. Root would go into this agreement, that is, the agreement respecting all of his securities, that he would be absolved from any further litigation, in any bankruptcy proceeding or otherwise. That was one of the very definite considerations and one of the bases upon which we submitted to Mr. Root the matter of entering into this agreement, and into an agreement to make an agreement with respect to these bonds which would mature in the future. I cannot say that he said the Petition had been prepared, but I say that the substance of it was that pleadings were being worked on, or about to be worked on, or something of a like nature, leading us very definitely to the conclusion that the City was going to avail itself, or attempt to avail itself of bankruptcy, under the second Act which had been passed by Congress. Mr. Exselsen pointed out in his argument to us that he felt that Congress had overcome the objections that had been made to the Constitutionality of the first Act, that is, the Wilcox Act, and that it had been sustained by the Court.

Q. Were there any threats made that the City would avail itself of the provisions of the Bankruptcy Act as to Root's securities if some compromise agreement or plan was not reached?

A. I wouldn't say—they weren't threats in the sense they had positively and definitely decided they were going to file a petition, or anything like that, but the substance of it was that if he did not enter into this agreement, the City was going into bankruptcy. No specific time set, or anything definite in that regard, I wouldn't say, but it was certainly being considered, or Mr. Exselsen,

who was holding himself out, so far as we were concerned, as agent of the City, and as a matter of fact, Mr. Adams had told me on one or more occasions that Mr. Exselsen was coming to us when we were in litigation over here in the Federal Court on the judgment, or the issuance of the alternative writ; I recall very definitely Mr. Adams was telling me he hoped we could get with Mr. Exselsen on it, and Mr. Exselsen was coming to us, and I don't know how far we carried on these negotiations at first with Mr. Adams, but I think they were very minor, so far as Mr. Adams was concerned.

Q. In connection with your conversations and agreements with Mr. Exselsen, I should like to ask you if he was held out to you by any other persons connected with the City as the agent and representative of the City in negotiating concerning these bonds?

A. Oh, very definitely so by Mr. Adams. There was never any question in my mind but what he had full authority to make any agreements respecting these securities, for the City or on behalf of the City. There was never any question in my mind in that regard.

Q. Was there ever any objection on behalf of the City to Mr. Exselsen's negotiations?

A. Never.

Q. Do you know whether or not the City officials knew that Mr. Exselsen was negotiating with you concerning these bonds?

A. I know—well, no—I don't know. I can't say whether the City officials knew this or not, that Mr. Exselsen was negotiating with us respecting the securities. I do know this, that in several conversations Mr. Exselsen stated the position of the City officials or the commission, as the case might be, or the governing body, respecting various phases of this. He did not say that they knew he was there that particular day or anything like that. I had a lot of conversations with him, telephone and otherwise,

and I want to, of course, be certain as to what I say is entirely correct here, but I am just morally certain that on numbers of occasions the City officials knew he was there from the conversations he made with me, and knew he was in our office, or would be there, but I can't say they knew he was there on a particular hour or day, or would be, or anything like that.

The Master:

You are getting into argument, now.

A. Yes, sir; that's true, Your Honor.

Q. Will you state whether or not, if you know Mr. Root incurred any expenses in connection with these negotiations with the City and the reaching of the agreements?

A. Oh, yes, he did.

Mr. Haycock:

We move to strike the question and the answer for the reason it has no bearing; whatever expense the litigant may have had in the negotiations is of no consequence in this case.

The Master:

You object to the question?

Mr. Haycock:

Yes.

The Master:

Do you move to strike the answer?

Mr. Haycock:

Yes, sir.

The Master:

Ruling reserved.

Q. Will you state what they were, and the nature of those expenses?

A. Well, there were some traveling expenses; I couldn't give you those, off-hand; there were attorneys' fees, largely.

Q. Were those incurred in connection with these agreements as evidenced by the agreement, Exhibit "B" that's in evidence, and the other agreements about which you have testified?

A. Yes, sir.

Q. And those attorneys' fees, were they incurred to your firm?

A. Yes, sir.

Mr. Clarke:

You may inquire.

Cross Examination.

By Mr. Adams:

Q. Mr. Watts, did the City Attorney or any other City official ever make a representation to you that Mr. Exselsen was authorized to make any contract for the City?

A. Well, I know that no one ever stated to me that Mr. Exselsen was authorized to make any contracts for the City. I know no such statement was ever made to me. I think on several occasions you talked to about the fact he was going to negotiate with me, and that sort of thing.

Q. Wasn't it explained to you that his authorization was to negotiate, and report the results to the City Commission for confirmation and agreement?

A. Certainly. Oh, yes; yes, sir. I can't say that it was to report to the City Commission; the governing body. I assume that was the City Commission.

Q. The governing body, yes.

A. Yes. I realized of course, that the City Commission

wouldn't have any authority to delegate such power to Mr. Exselsen.

Q. Were you ever advised that the governing authority of the City, which happens to be the City Commission under the charter had ever confirmed or approved or ratified the verbal agreements which you testified to in regard to the bonds and coupons held by Mr. Root which were not included in the judgment?

A. Mr. Exselsen gave me to understand very definitely in my office that that agreement had been submitted and had been approved by the proper authorities of Coral Gables, and there was never any question but what it had, in my mind, because he so definitely stated.

Q. Well, do you refer to the written agreements which have been proven in this hearing as exhibits, or the verbal agreements?

A. I am referring to both of the agreements respecting the Root securities, and the authorization as to the issuance—as to the execution of the agreement—the written agreement, as I understood it was purely a pro forma, and that all these other matters, including that, had been taken care of with the City officials.

Mr. Adams:

We move to strike all of the witness' testimony regarding a verbal agreement alleged to have been made by Mr. Exselsen as a representative of the City, on the grounds stated in our previous objection.

The Master:

Ruling reserved.

Mr. Adams:

That's all.

(Witness excused.)

Mr. Clarke:

If it please the Court, I should like now, if Mr. Gibson cares, to put in the documentary evidence relating to his claim, before we have the argument.

Thereupon, the following proceedings were had relating to the Motion filed on behalf of Fiduciary Council, Inc.:

Mr. Gibson:

As to Fiduciary Council, the argument is addressed to that portion of the Answer and Objections of Fiduciary Council, filed September 11, 1940, constituting a special issue, and not addressed to that portion of it going to the case in main. The purpose of this argument on the part of this claimant is to be relieved from these bankruptcy proceedings. In the special issue phase of the Answer, however, is detailed a certain detriment suffered as the result of the special agreements shown, and at this hearing it is not the intention of counsel to get into the question as to whether or not, in the event the Court should rule that they are not entitled to be relieved from the proceedings, the detriment suffered by the claimants should be restored to the claimants. Such an argument will be unnecessary at this time if this claimant is relieved. If the claimant is not relieved, such matter can be brought up later in the case in main. I wanted to get that clear, because my special issue isn't the entire subject matter here today, Your Honor.—I wish herewith at this time to offer into evidence a certified photostatic copy of Stipulation in case No. 2442 of the United States District Court in and for the Southern District of Florida, Miami Division, wherein the Fiduciary Council, Inc. was the relator, and the City of Coral Gables was the respondent, said stipulation being executed by Morton B. Adams, Attorney for the City of Coral Gables, and W. Terry

Gibson, attorney for Fiduciary Council, Inc., and signed by Charles A. Briggs, Vice-President of Fiduciary Council, Inc. and signed by Paul D. McGarry, as Mayor of the City of Coral Gables, and under the seal of the City of Coral Gables, such seal being attested by George N. Shaw, City Clerk thereof. I think it is necessary that I testify in this cause myself. Being counsel, I have a reluctance to do so, but the only other party who can give the same facts to the Court would be Carl L. V. Exselsen, as fiscal agent for the City of Coral Gables, but he is not present at this time because of his absence from the City and the State of Florida. I want to read from that portion of the Answer filed by the creditor, Fiduciary Council, Inc., on September 11, 1940, referring to the Special Issue, the subject of this hearing. (Thereupon reading same to the Master.)

(Stipulation marked in evidence as Special Issue Exhibit "I".)

1799 W. TERRY GIBSON was thereupon sworn as a witness on behalf of Movant, Fiduciary Council, Inc., and being first duly sworn, testified as follows:

Mr. Gibson:

My name is W. Terry Gibson. I am a practicing attorney in the State of Florida, with offices in West Palm Beach, Florida, and I now represent the creditor, Fiduciary Council, Inc., in these proceedings, and did represent the said creditor during prior litigation, the purpose of which was to reduce the securities or obligations of the City of Coral Gables held by this creditor to judgment, and during the further ancillary proceedings in connection with the issuance of peremptory writ for the payment of said judgments; and through all the negotiations subsequently had

and entered into by and between Fiduciary Council, the City of Coral Gables, its agents and attorneys. About July, 1937, while representing Fiduciary Council, and shortly after we had for that creditor received a judgment and a peremptory writ requiring the judgment to be paid over a period of six years at 5% interest, I was introduced to a Mr. Carl L. V. Exselsen, in his offices in the Ingraham Building in Miami, Florida, by a Mr. Hollis Rinehart, who at that time was a City Commissioner of the City of Coral Gables, in company with Mr. Charles Carroll, who was Mr. Rinehart's law associate. The purpose of the introduction was to determine whether or not there was a possibility of a compromise of this case. Mr. Exselsen was introduced to me as the City's fiscal agent and refunding agent. Between that time and the 19th day of October, 1937, I had many conferences with Mr. Exselsen in this regard, some in his office, and on at least one occasion that I recall, in the office of and in the company of Mr. Morton B. Adams, the City Attorney. I do not recall exactly the details of the conference that was in the offices of Mr. Adams, except that it was quite argumentative. I do recall, however, that one of the settling influences of the conference was the fact that I made known to Mr. Exselsen and Mr. Adams that the bonds represented by my client were not speculative bonds but original purchases at a price exceeding 100 cents on the Dollar, and that when I left, I was advised by Mr. Exselsen that he would shortly get in touch with me. Now, the securities that I am referring to that were purchased originally at a price exceeding 100 cents on the Dollar, refer only to the securities held by Fiduciary Council, Inc. At that time I likewise represented the Mortgage & Securities Corporation, Steiner Brothers, bankers, a banking institution of Birmingham, Alabama, and Augustus T. Ashton, an attorney-at-law in Philadelphia, Pennsylvania. Some time later, Mr. Exselsen, I be-

lieve, suffered a broken leg, and could not get around very well, so he asked me to come to his office in the Ingraham Building, where we discussed many alternative plans of composition. The attitude between the parties had by this time become more or less friendly, and it appeared that some results were going to be obtained. Later, Mr. Exselsen called me in West Palm Beach and requested an evening appointment. The details of that conference are very clear in my mind. He stated that the second municipal bankruptcy Act was now available to the City, but that the City did not want to subject itself to bankruptcy nor did the creditors wish to subject themselves to bankruptcy unless it was absolutely impossible to reach an agreement with my particular creditors, Mr. Root, and some other creditors who I don't recall at this time, and I don't know as he advised me of the names. Further, that he had found it useless to attempt to negotiate with any other creditors unless he could first assure such other creditors that he had effectuated a settlement with me, that he was not at that time in position to make me a firm commitment of settlement, but that he would outline the terms of a settlement, and that if I would give him my word that when he had reached an agreement with other creditors, if he was able to reach such agreement with other creditors, that I would make a settlement along the terms verbally outlined, he would give me his word that even though he had settled with his other creditors he would settle with me on the terms outlined.

Mr. Adams:

If the Master please, we object to this continued lengthy statement as immaterial and irrelevant to the issues here. This record shows in evidence a stipulation filed in the Federal Court in another suit, which presents the issue made on the pleadings, and we don't think any of this is material and relevant to this issue.

The Master:

Are you moving to strike it?

Mr. Adams:

It is mostly hearsay, and we move to strike it, and the witness be instructed to discontinue.

The Master:

Ruling reserved; you may proceed.

Mr. Gibson:

I will tie it in, Your Honor.—Mr. Exselsen at that time proffered to make a cash settlement with all parties. Mr. Ashton could not be reached because he was in Europe, so no agreement whatever was made with him. Fiduciary Council, Inc. had invested—the claim of Fiduciary Council, Inc. was an investment; they had no need for cash, and to accept cash would have made them suffer a very heavy loss. As I recall it, the cash offer was approximately 65 cents on the Dollar. So the ultimate agreement reached was that the Mortgage & Securities Corporation, and Steiner Brothers, Bankers, would accept a cash settlement and be eliminated from the picture, and that the Fiduciary Council, Inc. be further negotiated with for the end of spreading the maturities of the indebtedness and the writ, and toward this end I went to New York for a further conference with Mr. Exselsen and my client, the Fiduciary Council, Inc., and at that time Mr. Exselsen paid, I think it was, approximately $8,000.00 on account, and on behalf of my client, and with Mr. Exselsen on behalf of the City, agreed to enter into a stipulation under which the City would have twelve years in which to liquidate the judgment instead of the six years provided for by the peremptory writ of mandamus; that the interest would be reduced from 5% to 3%; that if it ever in the future became necessary to invoke the terms of the bankruptcy act, these

claims would not be subject to such proceedings, being a separate, voluntary refunding, you might say, and a final and conclusive adjustment of the debt. Mr. Exselsen at that time delivered to me, as I recall it, certified or cashier's checks of the Chase National Bank, in excess of $125,000.00 to take care of the cash agreements with Mortgage Securities Company and the Steiner Brothers, Bankers.

Mr. Adams:

We wish to interject an objection here and a motion to strike the testimony relating to any negotiations or deals with others than the claimant in this case, the Fiduciary Council, Inc., as being irrelevant and immaterial and incompetent.

Mr. Gibson:

It is establishing an agency, Your Honor, and showing the consummation of the transaction.

The Master:

Ruling reserved.

Mr. Gibson: (Continuing):

I forgot to say that a further portion of the agreement with Fiduciary Council was that I was to refrain from all litigation against the City, directly or indirectly, or investment in the securities of the City, unless the securities so purchased were subjected to the refunding plan. An exchange of letters was required in this regard. I do not know whether or not that exchange of letters occurred in New York or subsequently in Miami. I will subsequently introduce the letters into evidence. Upon our return, I again conferred with Mr. Exselsen, and Mr. Adams, in Miami, and I don't recall whether it was at Mr. Adams' office or Mr. Exselsen's office, but I think it was at Mr.

Adams' office, and a stipulation was drafted in view of the fact that we were stipulating with regard to a prerogative writ of the Court, it was our joint conclusion that the Court should be advised of the matter before we entered into such a stipulation, and Mr. Adams and myself, as I recall it—Mr. Exselsen was not with us at this time—appeared before Judge Holland to discuss the matter, with the result that Judge Holland said that the Court would have no objection to any such stipulation. We then entered into the stipulation that has heretofore been introduced into evidence as Special Exhibit "I".

Mr. Haycock:

The City wishes to renew its objections to Mr. Gibson as to all testimony given relative to negotiations leading up to the stipulation introduced in evidence for the reason it is incompetent, irrelevant and immaterial, and that the special issue of the claimant is raised by his pleadings.

The Master:

And do you move to strike?

Mr. Haycock:

And we move to strike his testimony.

The Master:

Ruling reserved. Proceed.

Mr. Gibson: (Continuing):

At the time this stipulation was entered into, the exact place of which I do not recall right now, either in Mr. Adams' office or Mr. Exselsen's office, but the three of us were present, it was agreed that the stipulation should be withheld from the record for the time being, and the stipulation was withheld from the record until it appeared that the City was going to file its Petition in Bankruptcy.

when the stipulation was filed. There is one other incident that I wish to refer to, and I don't remember exactly the place, but the time was during the negotiations. I met, I think it was on a social occasion, Mr. Paul McGarry, who at that time was Mayor of the City of Coral Gables, and he at that time expressed a great deal of pleasure and satisfaction in the fact that he had effectuated or were about to effectuate this compromise, and expressed to me the City's appreciation for my attitude in the matter. In these negotiations my client, the Fiduciary Council, Inc., was subjected to some very heavy expenses. There were several trips to New York for conferences with my client regarding the negotiations, and one if not more conferences with Mr. Exselsen; there were numerous trips to Miami. In addition to this, my fee in the matter was paid by Fiduciary Council, Inc., and the fees and expenses to which my client has thus far been subjected greatly exceed $5,000.00. I think that I can testify further that Carl L. V. Exselsen was generally accepted by the bond fraternity, that is to say, the investment brokers, banks, and bond brokers, and that part of the public involved in the purchase, selling, investing and trading securities, as the duly accredited financial representative, fiscal agent and refunding agent of the City of Coral Gables in so far as its outstanding bonded obligations were concerned.

Mr. Gibson:

Are there any questions you would like to ask, Mr. Clarke?

Mr. Clarke:

I don't care to ask any. Mr. Adams might.

Mr. Adams:

I would like to move to strike all of the testimony of the witness relating to the negotiations leading up to the exe-

cution of the stipulation which has been filed as Special Issue Exhibit "I" in this cause.

The Master:

Ruling reserved. Do you want to ask him any questions?

Mr. Adams:

No, sir.

(Witness excused.)

Stipulation.

It Is Stipulated And Agreed by and between counsel for the petitioner, City of Coral Gables, and the creditor, C. J. Root, as follows:

1. That prior to delivery thereof that certain agreement dated December 1, 1937, between C. J. Root and City of Coral Gables, Florida, a copy of which was heretofore admitted in evidence as a part of Special Issue Exhibit "F", was executed on behalf of the respective parties as follows:

(Seal) (S.) C. J. ROOT.

CITY OF CORAL GABLES, FLORIDA,

(S.) By PAUL D. McGARRY,
Its Mayor-Commissioner.

(S.) E. M. WILLIAMS,
Its City Manager.

Attest:

(S.) G. N. SHAW,
Its Clerk.

(Corporate seal of the City of Coral Gables, Florida.)

"Signed, sealed and delivered in the presence of:
(S.) L. D. CANN,
(S.) R. D. WALKER,
As to the Bondholder.
(S.) HELEN ECKHOFF,
(S.) K. MOZLEY,
As to the Municipality.

Approved:
(S.) JENNINGS & WATTS,
As Attorneys for C. J. Root.
(S.) MORTON B. ADAMS,
As Attorney for City of Coral Gables, Florida."

2. That prior to the filing thereof in the United States District Court the certain stipulation, a copy of which has heretofore been admitted in evidence as a part of Special Issue Exhibit "F", was dated the 19th day of January, A. D. 1938, and was executed by "Jennings & Watts", as Attorneys for C. J. Root, and by "Morton B. Adams", as Attorney for City of Coral Gables, Florida.

Thereupon, there being no further witnesses produced, the evidence as to the Special Issue herein involved was concluded, and the matter was argued by counsel to the Special Master, upon completion of which the hearing was adjourned.

1811 EXHIBIT A.

Special Issue Filed Jan. 31, 1941, F. M. Hudson, Master.

On January 31, 1941 Special Issue Exhibit "A" was filed before Special Master in words and figures as follows, to-wit:

Stipulation and Agreed Statement of Facts.

(Title Omitted.)

It is hereby stipulated and agreed by and between the petitioner, City of Coral Gables, Florida, by its undersigned attorneys, and C. J. Root, a creditor of said city, by his undersigned attorneys, as follows:

1. On or about the 16th day of August, A. D. 1937, said C. J. Root did recover a judgment against said city in the total sum of $34,756.66. Said judgment was made and entered in and by the United States District Court in and for the Southern District of Florida in the case pending in said Court entitled C. J. Root, plaintiff, vs. City of Coral Gables, Florida, defendant, case No. 2333, Miami Civil. A true and correct copy of said judgment is attached to a certain pleading filed by C, J. Root in this proceeding entitled "Objection of C. J. Root to Entry to Stay Order" and marked Exhibit B thereto. Said copy of said judgment may be admitted in evidence in this proceeding. Said judgment was based upon a recovery of principal and interest due upon certain bonds and interest coupons of the issue known as Permanent Improvement Bonds of said city dated December 1, 1925. The particular bonds and interest coupons merged in said judgment and on which the same was based are set forth in a certain copy of Schedule of Bonds and Coupons Filed in Evidence attached to the aforesaid pleading of C. J. Root in this proceeding and marked Exhibit A thereto. Said copy of said schedule may be admitted in evidence in this proceeding. The calculation of the amount recovered in and by said judgment for said bonds and coupons and interest thereon is shown by a certain Affidavit of Proof attached to the aforesaid pleading of C. J. Root filed in this proceeding and marked Exhibit C thereto. Said copy of

said affidavit may be admitted in evidence in this proceeding.

2. Thereafter and on or about the 16th day of August, 1937, a certain Alternative Writ of Mandamus was issued in said case No. 2333, Miami Civil, upon order for the issuance thereof made by the Judge of said United States District Court, and said writ was served on said city. A copy of said writ is attached hereto marked Exhibit 1 and the same is made a part hereof as fully as if set forth herein in haec verba and the same may be admitted in evidence in this proceeding.

3. During the year 1937 the city importuned said C. J. Root to exchange his said judgment and the other bonds and coupons of said issue held by him for refunding bonds and tax participation certificates of the issue of January 1, 1937, (being the issue authorized by Ordinance 269 as amended by Ordinance 289, copies of which ordinances have been received and filed in evidence in this cause as petitioner's exhibits 6 and 9 respectively). Said C. J. Root declined to exchange his said securities for such refunding bonds and tax participation certificates and made known to the city his intention to proceed to collect his judgment and interest thereon and the other bonds and coupons of said issue dated December 1, 1925, held by him as provided therein. Thereafter and subsequently to the entry of said judgment and the issuance of said alternative writ of mandamus and about the month of November, 1937, the city, through its agents, proposed to C. J. Root that the claims of C. J. Root against the city on account of the securities held by him (bonds and coupons of the aforesaid issue dated December 1, 1925,) be adjusted and compromised by agreement whereby C. J. Root and the city would agree for the readjustment and extension of the maturity dates of the aforesaid securities held by C. J.

Root and a reduction of the rate of interest to be borne by the same.

4. Thereafter and on and before January 18, 1938, said C. J. Root did agree to the proposals of said city and the said city and C. J. Root did enter into mutual agreements as follows:

(a) As to said judgment and the securities therein merged and as to the following bonds of said issue dated December 1, 1925:

Bond Numbers	Maturity Dates
80 to 82, inclusive	December 1, 1936
95 to 98, inclusive	December 1, 1937
110 to 113, inclusive	December 1, 1938
126 to 130, inclusive	December 1, 1939

and interest due thereon to December 1, 1937, said parties did agree as set forth in and by Exhibit D of said pleading entitled "Objection of C. J. Root to Entry of Stay Order" heretofore filed in this proceeding, the said exhibit being a certified copy of Resolution No. 1783, adopted by the commission of the City of Coral Gables, Florida, on January 18, 1938, and embodying copies of the agreement and stipulation therein and hereinafter mentioned. Said Exhibit D and the original of the agreement therein mentioned, and dated December 1, 1937, may be admitted in evidence in this proceeding. Subsequent to the passage of said resolution said agreement and stipulation were executed and delivered by the respective parties and an original of said stipulation was filed in said suit No. 2333, Miami Civil, in said United States District Court. On May 19, 1938, the Judge of said Court made and entered an order approving and confirming said stipulation and ordering the entry of peremptory writ of mandamus thereon.

Copies of said order and peremptory writ of mandamus are attached to said pleading entitled "Objection of C. J. Root to Entry of Stay Order" heretofore filed in this proceeding marked Exhibit E and Exhibit F respectively and the said copies may be received and filed in evidence in this proceeding.

5. That at the time of the making of the agreements mentioned in paragraph 4 hereof substantially all of the bondholders of said city who had at the date of filing of the petition exchanged their securities for refunding bonds and tax participation certificates of the issue of January 1, 1937, had exchanged their securities for the refunding obligations or committed themselves so to do and deposited their old securities for exchange. At the time of the making of the agreements mentioned in paragraph 4 hereof the holders of more than ninety per cent of the securities contemplated to be refunded by the refunding securities of the issue of January 1, 1937, had exchanged their old securities or deposited the same for exchange and agreed to exchange for the refunding bonds and tax participation certificates of the January 1, 1937, issue.

6. The provisions of said agreement between the city and C. J. Root dated December 1, 1937, were complied with by both parties to the date of filing of the city's petition for composition of debts in this proceeding. Since the execution and delivery of said agreement C. J. Root has made no demands upon the city to pay any sums or make any levies for any of the securities of the city held by him except to pay the sums and make the levies as provided in said agreement.

7. That said city has paid interest on the principal amount of said agreement dated December 1, 1937, to June

30, 1940, and has paid on account of the principal amount of said agreement the sum of $9315.95.

8. The tax levies for the years 1938-1939 and 1939-1940 required to be made by said city under said agreement dated December 1, 1937, have been made and the tax levy required thereby for the year 1940-1041 has been made, subject to the provisions of the Temporary Injunction and Stay Order made and entered in this cause on July 26, 1940.

9. Wherever herein it is stipulated that a copy of any instrument may be admitted in evidence in this proceeding such copy shall be received and filed in evidence and shall have the same force and effect as the original or a certified copy thereof.

Dated at Miami, Florida, this 31st day of January, A. D. 1941.

MORTON B. ADAMS,
City Attorney.
D. H. REDFEARN,
IRA C. HAYCOCK,
As Attorneys for City of Coral Gables, Florida, Petitioner.

JENNINGS & WATTS,
EDWIN M. CLARKE,
As Attorneys for C. J. Root.

1816 EXHIBIT "C".

Special Issue, Filed Jan. 9, 1942, F. M. Hudson, Master.

On January 29, 1941 Special Issue Exhibit "C" was filed before Special Master in words and figures as follows, to-wit:

Stipulation Between City and C. J. Root.

(Title Omitted.)

The petitioner, the City of Coral Gables, and C. J. Root, a creditor, by their respective attorneys, hereby stipulate and agree that the agreement of the City and C. J. Root (as shown by the record) with reference to payment of the securities of the City held by C. J. Root (involved in what have been termed in this cause as special issues) was submitted by Carl L. V. Exselsen to and approved by certain groups of creditors (who accepted the January 1, 1937 refunding plan), before being finally agreed upon by C. J. Root and the City in the same manner as the City's agreement with Fiduciary Council, Inc. was submitted and approved as shown by testimony of said Carl L. V. Exselsen given herein on December 22, 1941. Said testimony may be considered as relating to the said Root agreement as well as to the agreement of Fiduciary Council, Inc.

Dated this January 9th, A. D. 1942.

D. H. REDFEARN,
IRA C. HAYCOCK,
MORTON B. ADAMS,
As Attorneys for the City, Petitioner.
JENNINGS & WATTS,
EDWIN M. CLARKE,
As Attorneys for C. J. Root.

1817 EXHIBIT "F".

Special Issue, Filed Jan. 31, 1941, F. M. Hudson, Master.

On July 26, 1941 Special Issue Exhibit "F" was filed before Special Master in words and figures as follows, to-wit:

Resolution No. 1783.

A Resolution Authorizing the Mayor-Commissioner, the City Manager and the City Clerk to Execute a Certain Agreement between C. J. Root and the City of Coral Gables Dated December 1, 1937; and Authorizing the City Attorney to File a Stipulation in the Case of C. J. Root vs. The City of Coral Gables Making Effective the Terms of said Agreement.

Be It Resolved By The Commission Of The City Of Coral Gables, Florida:

Section 1. That the Mayor-Commissioner, the City Manager and the City Clerk of and on behalf of The City of Coral Gables, Florida, be and they are hereby authorized and instructed to execute that certain agreement between C. J. Root and The City of Coral Gables dated December 1, 1937, in words and figures as follows:

This Agreement, made and executed in triplicate this 1st day of December, A. D. 1937, by and between C. J. Root, hereinafter called the municipality.

Witnesseth:

That Whereas, said bondholder is the plaintiff in a certain cause pending in the United States District Court in

and for the Southern District of Florida, wherein said municipality is defendant, said cause being No. 2333 Miami Civil in said Court; and

Whereas, the said bondholder did on the 16th day of August, A. D. 1937 recover his final judgment in said cause against said municipality in the total sum of Thirty-Four Thousand Seven Hundred Fifty-Six and 66/100 Dollars ($34,756.66), which said judgment bears interest at the rate of five per cent (5%) per annum from and after its date, and the said bondholder is now the owner and holder of said judgment upon which there has accrued to date interest in the amount of Five Hundred One and 56/100 Dollars ($501.56); and

Whereas, said bondholder is also the owner and holder of sixteen City of Coral Gables, Florida Permanent Improvement Bonds, dated December 1, 1925, which said bonds bear the numbers, mature, are in the total principal or face amount and have interest accrued thereon to the date of this agreement, as follows:

Bonds Numbers	Date of Maturity of Bonds	Principal or Face of Bonds	Interest Accrued to Date
80-82 Inc.	December 1, 1936	$ 3,000.00	$ 247.50
95-98 Inc.	December 1, 1937	4,000.00	330.00
110-113 Inc.	December 1, 1938	4,000.00	330.00
126-130 Inc.	December 1, 1939	5,000.00	412.50
		$16,000.00	$1,320.00

and

Whereas, the total sum now due on said bonds and said judgment, including interest to date, is the sum of Fifty-

Two Thousand Five Hundred Seventy-Eight and 22/100 ($52,578.22); and

Whereas, upon the petition of said bondholder there was issued in said cause on the 16th day of August, A. D. 1937 a certain alternative writ of mandamus commanding said municipality to include in the budget estimate of expenses for the next ensuing fiscal year, commencing July 1, 1938, an amount sufficient to pay and discharge all sums due the bondholder under his said judgment and to make appropriation in favor of said bondholder of a sum sufficient to pay said judgment, and to levy a tax upon all taxable property in said municipality subject to taxation, including all homesteads regardless of the valuation of same, sufficient to produce when collected the amount so appropriated, including the amount necessary to pay the sums due said bondholder by reason of his aforesaid judgment, and further commanding other acts and things incident thereto; and

Whereas, said municipality, being without defense to the issuance of a peremptory writ in accordance with the commands of said alternative writ, and knowing the financial embarrassment it would undergo should such peremptory writ be issued, did advise said bondholder fully in the premises whereupon said bondholder indicated himself to be willing to enter into a reasonable compromise agreement whereby the full amount of said judgment and interest accrued thereon and of said bonds and interest accrued thereon should be paid over a period of twelve years as hereinafter provided, and the parties hereto have agreed upon a compromise agreement as hereinafter provided, to the faithful performance of which agreement said municipality pledges its co-operation and its full faith and credit;

Now, Therefore, for and in consideration of the premises and of the mutual covenants and agreements herein con-

tained and of the sum of One Dollar ($1.00) to each of the parties hereto by the other in hand paid, receipt whereof is hereby acknowledged, it is mutually covenanted and agreed as follows:

1. That the aforesaid sum of Fifty-Two Thousand Five Hundred Seventy-Eight and 22/100 Dollars ($52,578.22) shall hereafter bear interest at the rate of four per cent (4%) per annum, and the said bondholder does hereby waive any interest which might in the future accrue under said judgment or said bonds in excess of said four per cent (4%) per annum on said sum of Fifty-Two Thousand Five Hundred Seventy-Eight and 22/100 Dollars ($52,578.22).

2. That the time of payment of said sum of Fifty-Two Thousand Five Hundred Seventy-Eight and 22/100 Dollars ($52,578.22) is hereby altered and amended so that one-twelfth of said sum shall become due and payable on or before the 1st day of June, A. D. 1939 and a like installment to become due on the same date of each year following until said sum is paid in full; that on or before each due date of a principal installment said municipality shall pay to said bondholder said principal installment together with interest at the rate aforesaid on the balance of said Fifty-Two Thousand Five Hundred Seventy-Eight and 22/100 Dollars ($52,578.22) from time to time remaining outstanding and unpaid.

3. That said municipality will include in its budget estimate of expenses for the next ensuing fiscal year an amount sufficient to pay and discharge the sums due hereunder on or before the 1st day of June, A. D. 1939 and will pass and adopt an appropriate ordinance for said fiscal year, including therein an appropriation in favor of said bondholder of a sum sufficient to pay and discharge the sums due under this agreement on or before the 1st day

of June, A. D. 1939, and will levy a tax during the taxable year commencing in 1938 upon all the taxable property in the City of Coral Gables, Florida subject to taxation at the time the bonds of said bondholder were issued, including all homesteads regardless of the valuation of same, sufficient to produce when collected the amount so appropriated by said appropriation ordinance, including the amount necessary to pay the sums due under this agreement on or before the 1st day of June, A. D. 1939, and will pay over to the bondholder the moneys realized from such levy up to an amount equal to the sum due under this agreement on or before the 1st day of June, A. D. 1939, as and when the same are collected upon demand of the bondholder, and if demand be not made prior thereto the same shall be paid on the 1st day of June, A. D. 1939; and will pass all necessary resolutions and ordinances to effect the agreements herein contained; and said municipality will thereafter and in each ensuing fiscal year until said sum of Fifty-Two Thousand Five Hundred Seventy-Eight and 22/100 Dollars ($52,578.22) is paid in full, include in each of its annual budget estimates of expenses the amount necessary to pay the sums annually due hereunder and will pass the necessary annual appropriation ordinances, levy the necessary yearly taxes, and pay over the sums collected therefrom in the manner aforesaid, to the end that said municipality may fully comply with its agreements herein contained. That all amounts so collected for payment on the indebtedness shall be kept and deposited in some bank in the City of Miami or in the City of Coral Gables, Florida in an account separate and apart from all other moneys of said municipality or its other creditors, said account to be marked "In Trust for C. J. Root", or words of similar effect.

4. That a stipulation, a copy of which is attached hereto, marked "Exhibit A", and which is by reference there-

to made a part hereof, shall be forthwith signed by the attorneys for the respective parties hereto and filed in said suit, and the attorneys for the respective parties are hereby authorized to join in a motion for peremptory writ of mandamus to issue in said cause in the form as outlined in said stipulation.

5. That during the effective period of this agreement and as long as the same shall remain in force and effect, said bondholder will not institute suit or suits for the purpose of reducing to judgment his aforesaid bonds or interest coupons attached thereto, nor will he sell or negotiate the same during said period.

6. That this agreement shall remain in force and effect as long as and only so long as said municipality shall well and fully perform its several covenants and agreements herein contained promptly at the times herein designated; and should said municipality in any manner fail to comply with any of the provisions of this agreement promptly at the times herein mentioned, then this agreement shall automatically become null and void and of no effect, and in such event said bondholder shall be entitled to pursue his legal rights to recover all of the sums due under said judgment and under said bonds and the interest coupons thereto annexed without reference to the provisions hereof, and said municipality shall thereupon consent that the peremptory writ mentioned in the aforesaid stipulation be vacated upon petition of said bondholder and that further peremptory writ shall then issue in accordance with the commands of the said alternative writ.

7. That nothing herein contained shall be construed as modifying or altering or changing the amounts due and to become due on said judgment or said bonds or said interest coupons unless and until this agreement is complied

with in full, and upon payment of each installment of principal and interest as hereinabove mentioned, said municipality shall receive receipt of the bondholder or his attorneys therefor and the payments shall be applied towards the full payment of said total sum of Fifty-Two Thousand Five Hundred Seventy-Eight and 22/100 Dollars ($52,578.22) and interest accruing thereon, each said payment to be applied first to accrued interest and the balance to principal, and said municipality shall also be entitled to a surrender of bonds of the face amount of such payments on account of principal, or, at the election of the bondholder, a partial release of said judgment in the amount of the several payments on account of principal, but said municipality shall not be entitled to a surrender of any of the coupons annexed to said bonds until the provisions of this agreement are fully performed and at the time this agreement is fully performed said municipality shall be entitled to a surrender of all said interest coupons and all bonds not theretofore surrendered and to a complete satisfaction of said judgment; and in the event of a failure on the part of said municipality to perform any of its agreements as herein contained, the sums of money theretofore paid pursuant to this agreement shall be applied on account of the indebtedness due bu virtue of said judgment and by virtue of said bonds and interest coupons without respect or reference to the provisions hereof.

In Witness Whereof, said bondholder has hereunto set his hand and seal and said municipality has caused these presents to be signed in its name by its Mayor-Commissioner and its City Manager, and its corporate seal to be affixed, attested by its Clerk, all on the day, month and year first above written.

.....

(Seal) CITY OF CORAL GABLES, FLORIDA,

By .....
Its Mayor-Commissioner.

.....
Its City Manager.

Attest:

.....
Its Clerk.

(Corporate Seal)

Signed, sealed and delivered in the presence of:

.....
As to the bondholder.

.....

.....
As to the Municipality.

Approved:

.....
As Attorneys for C. J. Root.

.....
As Attorney for City of Coral Gables, Florida.

1825 "EXHIBIT A."

In the District Court of the United States, in and for the Southern District of Florida.

C. J. Root, Plaintiff,
vs. No. 2333-Miami Civil.
City of Coral Gables, Florida, a municipal corporation, Defendant.

Stipulation.

It is hereby stipulated and agreed by and between C. J. Root, plaintiff in the above and foregoing cause, and City of Coral Gables, Florida, a municipal corporation, defendant in said cause, by their undersigned and duly authorized attorneys, as follows:

That Whereas, said plaintiff did on the 16th day of August, A. D. 1937 recover judgment herein against the defendant in the total amount of Thirty-four Thousand Seven Hundred Fifty-Six and 66/100 Dollars ($34,756.66) and on said date an alternative writ of mandamus was issued from and out of this Court, commanding the defendant to do certain acts including the levy of a tax for the next ensuing fiscal year sufficient to pay the amounts due under said judgment; and

Whereas, plaintiff and the defendant did on the 1st day of December, A. D. 1937 enter into a certain agreement wherein and whereby it was among other things provided that this stipulation should be signed by the undersigned attorneys and filed in this cause, and further providing that said attorneys were thereby authorized to join in a motion for peremptory writ of mandamus to issue herein in compliance with this stipulation, said agreement

further providing that should said municipality in any manner fail to comply with provisions of said agreement promptly at the times therein mentioned, then said agreement should automatically become null and void and said municipality should thereupon consent that the peremptory writ mentioned in this stipulation be vacated upon petition of plaintiff, and that further peremptory writ should then and in such event issue in accordance with the commands of said alternative writ;

Now, Therefore, it is hereby stipulated and agreed as follows:

1. That the City of Coral Gables, Florida, does hereby withdraw its certain motion to quash said alternative writ of mandamus, which said motion was heretofore filed herein.

2. That this Court shall forthwith issue peremptory writ of mandamus in this cause, without the necessity of any amendment to the said alternative writ, commanding the respondent, City of Coral Gables, Florida and its several officials, including its City Manager, to include in its annual budget estimate of expenses for the fiscal year commencing July 1, 1938 an amount sufficient to pay and discharge one-twelfth of the principal sum of said judgment together with interest at the rate of four per cent (4%) per annum on the full amount of said principal, and to include in each annual budget estimate of expenses for eleven fiscal years next after the fiscal year commencing July 1, 1938, an amount sufficient to pay and discharge one-twelfth of the principal amount of said judgment, together with interest at the rate of four per cent (4%) per annum, on the balance of said principal amount of said judgment from time to time remaining outstanding and unpaid; and further commanding said City of Coral

Gables and its several officials, including its City Commissioners, to prepare, pass and adopt an appropriate ordinance for said fiscal year commencing July 1, 1938 and to include therein and make appropriation in favor of C. J. Root of a sum sufficient to pay and discharge said one-twelfth part of said principal amount of said judgment together with said interest on the full principal amount of said judgment; and further commanding said City of Coral Gables, Florida and its several officials, including its City Commissioners, to prepare, pass and adopt, in each of the eleven fiscal years next after said fiscal year commencing July 1, 1938, an appropriation ordinance for said fiscal year and include therein and make appropriation in favor of C. J. Root of a sum sufficient to pay and discharge one-twelfth of the principal amount of said judgment together with said interest on the balance of said principal from time to time remaining outstanding and unpaid; and further commanding said City of Coral Gables, Florida and its several officials, including its City Commissioners, to levy for the taxable year commencing in 1938 and for each of the eleven fiscal years next thereafter, a tax upon all of the taxable property in said city subject to taxation at the time the bonds of C. J. Root were issued, including all homesteads regardless of the valuation of the same, sufficient to produce when collected the several amounts heretofore commanded to be appropriated, and appropriated by said several appropriation ordinances, including the amount necessary to pay, in each of said fiscal years, one-twelfth of the principal amount of said judgment together with said interest on the full balance of said principal amount of said judgment from time to time remaining outstanding and unpaid; and further commanding said City of Coral Gables, Florida and its several officials, including its Tax Assessor, to assess during each of said twelve fiscal years all such taxable property, including homesteads regardless of the valuation of same,

within the corporate limits of said city at their cash values, and to calculate, carry out and extend the full amount of taxes levied for each said fiscal year including the tax levied for payment on C. J. Root's judgment, upon the assesment roll of said city for such taxable year, and to deliver said tax roll to the Tax Collector of said city and to attach thereto the warrant of the Tax Assessor commanding the Tax Collector to collect said taxes so levied, including the tax levied during each of said years for payment on C. J. Root's said judgment; and further commanding said city of Coral Gables, Florida and its several officials, including its Tax Collector, to collect the said tax so levied during each said fiscal year for the payment on account of C. J. Root's said judgment against each and every piece of property on said assessment roll in the same manner and at the same time as other City taxes are collected; and further commanding the said City of Coral Gables, Florida and its several officials, including its City Commissioners, City Manager and Clerk, to issue and sign all warrants necessary for the payment to C. J. Root of the moneys realized from the several levies made for payment on account of his said judgment and to pay over to said C. J. Root the moneys collected under each said levy, as and when the same are collected until C. J. Root's claim is paid in full, and to pass all necessary resolutions or ordinances to effect the commands of said writ.

3. That in the event said City of Coral Gables, Florida at any time during the twelve fiscal years mentioned in paragraph 2 of this stipulation, fails in any manner to comply with the commands of the peremptory writ issued pursuant to this stipulation, or fails to comply with the terms of said agreement between the plaintiff and defendant bearing date the 1st day of December, A. D. 1937, then and in that event said defendant hereby consents that the peremptory writ entered pursuant to this stipulation

shall be vacated and that this Court shall issue peremptory writ in accordance with the commands of the alterantive writ heretofore issued herein, commanding the levy and other things commanded to be done by said alternative writ, to be done by said defendant during the next ensuing fiscal year following a showing to the Court that the commands of the peremptory writ issued pursuant to this stipulation or the terms of said agreement have not been complied with.

Dated at Miami, Florida this .... day of January, A. D. 1938.

.....
As Attorneys for plaintiff, C. J. Root.

.....
As Attorney for Defendant City of Coral Gables, Florida.

Section 2. That the City Attorney be and he is hereby authorized and instructed to execute and file in the case of C. J. Root vs. The City of Coral Gables, United States District Court #2333-M-Civil, the Stipulation attached to said Agreement as Exhibit "A".

I, G. N. Shaw, Clerk of The City of Coral Gables, Florida, do hereby certify that the above is a true and complete copy of Resolution No. 1783, adopted by the Commission of The City of Coral Gables on January 18th, 1938.

Witness my hand and the seal of The City of Coral Gables, Florida, this 14th day of February, A. D. 1938.

G. N. SHAW,
City Clerk.

(Corporate Seal)

1831 EXHIBIT I.

Special Issue, Filed Jan. 31, 1941, F. M. Hudson, Master.

On January 31, 1941, Special Issue Exhibit "I" was filed before Special Master in words and figures as follows:

In the United States District Court in and for the Southern District of Florida. Miami Division.

Fiduciary Counsel, Ins., a corporation, Relator,
vs. #2442-M-Civil.
City of Coral Gables, a Municipal Corporation under the laws of the State of Florida, Respondent.

Stipulation.

Whereas, a peremptory writ of mandamus has been issued in the above entitled cause commanding a levy of taxes by the Respondent to pay Relator's judgment heretofore recovered in this cause on the 26th day of July, A. D. 1937, in the amount of One Hundred Thirty Thousand Eight Hundred Seventy-eight Dollars and Twenty-one Cents ($130,878.21), plus interest at the rate of five per centum (5%) per annum from said date until fully paid, and that said levy has been spread by the Court over a period of six years beginning with the fiscal year 1937-38, and

Whereas, it is the desire of the Respondent, City of Coral Gables, to have the spread of said levy of taxes as aforesaid extended from six to twelve years and the interest thereon reduced to the rate of three per centum (3%) per annum, and

Whereas, the Relator has agreed that if the Respondent will fully carry out and perform the terms of this stipula-

tion providing the manner of payment of Relator's judgment and interest accruing thereon, that such performance shall be a sufficient compliance with the peremptory writ of mandamus heretofore issued in this regards in this cause;

Now, Therefore, by virtue of authority first had and obtained from the parties Relator and Respondent in the above entitled cause and after having fully advised the Court in the premises, and after having ascertained that the Court had no objection to the parties hereto entering into this Stipulation, it is hereby agreed and stipulated by and between the parties hereto by their respective undersigned attorneys, as follows, to-wit:

1. That for each of the said six fiscal years, as set forth in the peremptory writ of mandamus heretofore issued in this cause, the Respondent shall levy sufficient taxes to produce and shall pay to the Relator one-twelfth (1/12) of the balance due on the principal of Relator's judgment in the amount of One Hundred Twenty-two Thousand Eight Hundred Seventy-eight Dollars and Twenty-one Cents $122,878.21), plus interest on the entire unpaid balance from the 26th day of July, A. D. 1937, at the rate of three per centum (3%) per annum. The time and manner of payments to be made by the Respondent to the Relator shall be the same as set forth in said peremptory writ, provided, however, that the total amount due for each fiscal year shall be paid to the Relator before the adoption of the budget of Respondent for the ensuing fiscal year.

2. It is further agreed to, and it is hereby stipulated by the Respondent that an alias peremptory writ be issued at the end of the sixth fiscal year set forth in the original peremptory writ, said writ to require Respondent to levy

taxes to pay the balance due on said judgment, plus interest thereon at the rate of three per centum (3%) per annum, until fully paid, spread over a period of six years in the same manner as provided for in the present peremptory writ of mandamus.

3. Respondent further stipulates and agrees that upon the execution of this stipulation that the Court shall enter an order dismissing the appeal in the above entitled cause, and the entry of such an order by the Court upon Motion of either party hereto is hereby consented to by the Respondent.

4. Respondent further stipulates and agrees that it will not invoke, or cause to be invoked, the terms of the U. S. Public Act, No. 320, Chapter 657, approved by the President of the United States on August 16th, 1937, generally known as the "Municipal Bankruptcy Act", an amendment to the "Federal Bankruptcy Act", during the time this stipulation is in effect.

5. It is further agreed and stipulated by and between the parties hereto that should the aforesaid "Municipal Bankruptcy Act", or any law of like nature, or purpose hereafter enacted be invoked to effect a composition of the Respondent's indebtedness in any manner or form whatsoever during the period covered by this stipulation and while the same is in full force and effect, or should the Respondent fail in any of the said fiscal years to pay the full one-twelfth (1/12) of Relator's judgment, plus accrued interest thereon as aforesaid in the manner provided for herein, then in that event this stipulation shall automatically become null and void and of no further force and effect, and the peremptory writ heretofore issued in this cause shall from thenceforth be strictly complied with by the Respondent.

6. It is further stipulated and agreed that nothing herein shall in any wise be construed as modifying or changing

the judgment heretofore issued in this cause adjudicating the amounts due to the Relator by the Respondent, or the peremptory writ of mandamus heretofore issued in this cause. It is merely the intent and purpose of this stipulation to consent to an extension of time to pay the indebtedness involved, over a period of twelve years and to reduce the interest on said judgment as provided therein from five (5%) to three (3%) per centum per annum, on the unpaid balance thereof, so long as the terms of the aforesaid "Federal Bankruptcy Act", or any amendment thereto, are not invoked in any manner to effect a composition of Respondent's obligations, and so long as the City levy sufficient taxes to pay, and does pay the said indebtedness together with the interest accruing thereon in the manner and at the times hereinabove set forth, and that any default of any of the terms of this stipulation shall render it null and void and of no further force and effect, in which event the Respondent shall from thenceforth fully comply with the commands of said peremptory writ.

Stipulated And Agreed To this the 19th day of October, A. D. 1937.

MORTON B. ADAMS,
Attorney for the Respondent.
W. TERRY GIBSON,
Attorney for the Relator.

The foregoing stipulation is hereby approved.

FIDUCIARY COUNSEL, INC.,
By CHARLES A. BRIGGS, II,
V. P.

CITY OF CORAL GABLES,
By PAUL D. McGARRY,
Mayor.

Attest:
G. N. SHAW,
City Clerk.

1835 S. P. EXH. I.

Certified Copy.

United States of America,
Southern District of Florida, ss.

I, Edwin R. Williams, Clerk of the United States District Court in and for the Southern District of Florida, do hereby certify that the annexed and foregoing is a true and full copy of the original Stipulation, filed September 13, 1940 in the case of Fiduciary Counsel, Inc., a corporation vs. City of Coral Gables, Florida, case No. 2442-M Civil.

Now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Miami, Florida this 13th day of September, A. D. 1940.

EDWIN R. WILLIAMS,
By GEO. W. PITCHFORD,
Deputy Clerk.

1836 On May 18, 1942 Objections of Ed. C. Wright & Company to Master's Report were filed in words and figures as follows, to-wit:

(Title Omitted.)

OBJECTIONS OF ED. C. WRIGHT TO MASTER'S REPORT.

1. The Master's Findings of Fact are clearly erroneous.

2. The Master's conclusions of law and recommendations are clearly erroneous.

3. The Master's Findings of Fact overlook or ignore the greater part of the material evidence.

4. The Master's conclusions of law and recommendations overlook or ignore numerous legal points urged by this creditor.

5. The Master's recommendations regarding the claims of C. J. Root and Fiduciary Counsel, Inc., will result in unfair discrimination in favor of said creditors, and against this creditor.

6. The Master should have found that the alleged Plan submitted for confirmation as being a partially completed Plan of Composition is not the Plan under which the City acted up to the time of filing the Petition, and that the City does not seek confirmation of the Plan under which it acted.

7. The Master should have found that the only Plan partially completed when the Petition was filed is a Plan of Readjustment and Compromise, of which Deafendant's Exhibit No. 1 is a part, expressly providing for discrimination and preferences in favor of creditors who would not agree to the general terms, and that in partially executing said Plan, the City did discriminate in favor of and prefer numerous creditors, and that, because of the provision for discrimination and preferences, said Plan could not have been confirmed as a Plan of Composition before it was placed in effect, and now that it has been partially executed by discriminating in favor of and preferring numer-

ous creditors, it cannot now be cofirmed as a Plan of Composition under Sec. 83(j) of the Bankruptcy Act.

8. The Master should have found that the outstanding refunding bonds and tax participation certificates were not exchanged in "Partial completion" of a Plan of Composition, but were exchanged under a Plan of Readjustment and Compromise, of which Defendant's Exhibit No. 1 is a part, expressly providing for discrimination and preferences in favor of creditors who would not agree to the general terms, and that the City did discriminate in favor of and prefer numerous creditors, and that, because the Plan did not provide for the equal treatment of all creditors, it was not a Plan of Composition, and the action taken pursuant to it did not constitute the "partial completion" of a Plan of Composition.

9. The Master should have found that the Petitioner did not offer a partially completed Plan of Composition within the meaning of the Bankruptcy Act, and that §83(j) is not applicable herein.

10. The Master should have found that Petitioner, by expressly providing, in Defendant's Exhibit No. 1, for discrimination and preference in favor of creditors who would not agree to the general terms, and by subsequently discriminating in favor of and preferring numerous creditors, abandoned Ordinances Nos. 269 and 289, as a Plan of Composition, and could not thereafter revive or adopt that Plan for the purpose of coercing its acceptance by creditors with whom it had been unable to agree, so as to force them to settle on terms less favorable than those granted in the discriminatory and preferential settlements.

11. The Master should have found that the Petitioner, in seeking the aid of a Court of equity, should have fully

and fairly disclosed all terms of its purported Plan of Composition, and that Petitioner falsely alleged that the Plan under which it had theretofore acted was set out in Ordinances Nos. 269 and 289, when, in truth, and in fact, the City well knew that other material terms and provisions of the Plan appeared only in Defendant's Exhibits Nos. 1, 2 and 3.

12. The Master should have found that numerous creditors, through their representatives, were informed of, and approved and consented to, the discrimination and preferences in favor of others who would not assent to the general terms, and that creditors who so consented were disqualified to, and could not, accept the purported Plan for the purpose of coercing this creditor to compose his claim on terms less favorable than those granted in the discriminatory and preferential settlements, and in computing whether the purported Plan had received the statutory two-thirds affirmative vote necessary for confirmation, the Master should have excluded acceptances by creditors whose representatives consented to the discriminatory and preferential settlements.

13. The Master should have found that the Plan submitted for confirmation does not, in its practical incidence, embody a fair and equitable bargain, openly arrived at, and devoid of subtle overreaching, because:

(a) In addition to the general terms offered in Ordinances Nos. 269 and 289, the City entered into a special contract (Defendant's Exhibit No. 1) providing for discrimination and preferences in favor of creditors who would not assent to the general terms.

(b) The City also entered into a special contract with the Barker Committee (Defendant's Exhibit No. 2) provid-

ing for discriminatory and preferential treatment in favor of creditors represented by the Committee.

(c) It does not affirmatively appear that the existence of each special contract was fully and completely disclosed to the creditors when their assents to the general terms were solicited.

(d) In violation of the general rule of equality between creditors, the City made discriminatory and preferential settlements with numerous creditors who would not accept the general terms.

(e) It does not affirmatively appear that the discriminatory and preferential settlements were fully and completely disclosed to all creditors when their assets to the general terms were solicited.

14. The Master should have found that the Plan set out in Ordinances Nos. 269 and 289 was not offered in good faith, in that, while purporting to have operated under it since 1937, the City had not punctiliously complied with its terms and provisions, but by shrewd and cunning interpretation, overreaching and subtle evasions, had ingeniously minimized the annual payments to Tax Participation Certificate holders in the following respects:

(a) By not assessing all taxable property at full value.

(b) By not making the minimum debt service tax levies required by § 8 of Ordinance No. 269.

(c) By purchasing unrefunded bonds, judgments and other obligations.

(d) By purporting to refund the bonds, judgments and obligations so purchased, and holding the refunding bonds and T. P. C.'s as subsisting obligations.

(e) By diverting debt service funds to the purported payment of interest on refunding bonds so acquired, and using the diverted sums for purposes other than debt service.

(f) By diverting debt service funds to the purported partial payment of T. P. C.'s so acquired and using the diverted funds for purposes other than debt service.

(g) By diverting debt service funds to the purported payment of interest on other refunding bonds which the City purchased and held as uncanceled obligations, and using the diverted funds for purposes other than debt service.

(h) By making installment payments in partial satisfaction of judgments, and treating the payments as if they represented partial payments on account of the purchase of securities.

(i) By not foreclosing delinquent taxes.

(j) By adopting Resolution No. 1847 (Defendant's Exhibit No. 53) directing that no sale be made of any city-owned tax certificates against properties on which earlier tax certificates has been sold to the Coral Gables Development Company.

(k) By adopting Ordinance No. 1971 (Defendant's Exhibit No. 54) directing the sale of city-owned tax certificates for 1937 and 1938 in "aggregate cumulative groups" of $10,000 or more, at their face amount, without interest or penalties.

(l) By selling, in 1937, all of the delinquent tax assets mentioned in § 12 of Ordinance No. 269, and using their proceeds in discriminatory and preferential settlements with creditors.

(m) By not applying, in each year, to the purchase and retirement of outstanding refunding bonds, at their then market prices, the several sums of money mentioned in § 12 of Ordinance No. 269.

(n) By not making, in each year, the supplemental tax levy provided for in § 12 of Ordinance No. 269.

15. The Master should not have found that the document of December 24, 1936 (Defendant's Exhibit No. 3), the contract with Barker Committee (Defendant's Exhibit No. 2) and the contract with Exselsen (Defendant's Exhibit No. 1), were all steps taken in a bona fide effort to bring about the acceptance of a Plan of Composition.

16. The Master should not have found "that the continued exchanges of securities with certain creditors and settlements with other creditors were made in good faith in an effort to bring about the acceptance of the Plan of Composition."

17. The Master should not have found that the conduct of Petitioner's representatives was pursued in the ordinary course of business without concealment of deceit, and with no purpohe to withhold information.

18. The Master should not have found that the Plan followed by the City was fair and equitable and did not discriminate unfairly in favor of any creditor or class of creditors.

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1842 On May 21, 1942 Objections and Exceptions of American National Bank of Nashville to Report of the Special Master were filed in words and figures as follows, to-wit:

OBJECTIONS AND EXCEPTIONS OF THE AMERICAN NATIONAL BANK OF NASHVILLE TO THE REPORT OF THE SPECIAL MASTER.

(Title Omitted.)

The American National Bank of Nashville objects and excepts to the report of the Honorable F. M. Hudson, Special Master filed with the Clerk of this Court on the 8th day of May, 1942, in the following particulars:

1. This Creditor objects and excepts to the Master's findings of Fact Numbered 1 and 2, that the Plan of Composition filed by Petitioner is fair, equitable and to the best interests of the creditors, and does not discriminate unfairly in favor of any creditor or class of creditors, and complies with Chapter 9 of the Bankruptcy Act of the United States, which are similar findings, in that—

(a) The alleged Plan of Composition was adopted December 23, 1936, by Ordinance 269, and modified September 4, 1937, by Ordinance 289, and the authorization of this suit was not until March 5th, 1940, by Ordinance 347,

and the Bankruptcy Act under which the suit is brought was enacted and in effect August 24, 1937, (Chapter 754). This delay is unexplained, and during this period of delay no Plan of Composition was adhered to, but refunding was attempted solely on a plan of voluntary adjustment, with separate deals with each separate creditor, and with a complete abandonment or waiver of the alleged plan of 1936, now sought to be upheld; therefore, such alleged plan cannot meet the requirements of the Bankruptcy Act.

(b) C. J. Root and Fiduciary Counsel, Inc., dissenting creditors, are allowed and permitted to retain all amounts paid heretofore as a creditor on their claims; this is a direct and distinct modification of the plan not permitted by law, and is an unfair discrimination in favor of said creditors, giving each a larger payment than is offered other creditors.

(c) The interpretation of Section 19 of the alleged Plan of Composition that the City may use surplus funds for the acquisition of Refunding Bonds or Tax Participation Certificates for its own use and benefit, and that the Municipal Bankruptcy Act impliedly permits this, in effect permits the incorporation in a plan of composition of a right to perfer one creditor over another in the discretion of the municipality.

(d) The interpretation of Section 12 of the alleged Plan of Composition that the City may set aside a fund as much as $500,000.00 and purchase securities at the pleasure of the City, and that the Municipal Bankruptcy Act permits this, in effect approves an inequality of distribution to creditors and the preference of one creditor over another.

(e) The interpretation that Section 8 of the alleged Plan of Composition binding the City to levy specific taxes was not binding on the City, but could be altered, amended or changed under the orders of a Florida Court, or any other Court, for the benefit of certain creditors, and that the Municipal Bankruptcy Act permits this, in effect approves the preferential treatment of certain creditors and results in preferring of certain creditors over others, and modifying the Plan.

(f) The approval of the postponement of bankruptcy proceedings from August 1937 until March 1940, as within the legal rights of petitioner "in the hope and effort to secure unanimous acceptance of its Plan of Composition," clearly contradicts the undisputed proof that such postponement was not in an attempt to bring about acceptance of any Plan of Composition, but was an effort to accomplish a voluntary adjustment by an independent settlement of unrefunded indebtedness, by separate trades with each separate creditor. (See Defendant's Exhibit No. 47.)

(g) The approval of the departure from or modification of the alleged plan by the City in that "the funds expended in adjustments with certain creditors were derived from proceeds of delinquent tax assets of the City," for the reason that this diversion, including the contract entered into with Coral Gables Development Company, was "in good faith as the best practical means of realizing on the City's delinquent assets," approves a modification of the plan because the Master finds it desirable and without following the plain provisions of the Bankruptcy Act as to modifying a plan.

This clear departure from the plan was never submitted to creditors, and the alleged plan, submitted in 1940, with the petition in this cause, did not disclose this modifica-

tion and at that time the original plan was clearly incapable of performance.

(h) The finding that the rule of law requiring full disclosure of an alleged Plan of Composition does not require affirmative disclosures of every transaction, including departures therefrom, materially affecting rights of creditors, and does not require disclosure of the abandonment of parts of the plan or failure of performance thereunder.

(i) The findings and recommendations are erroneous, are not supported, but in contravention of the material evidence in this case and the law applicable thereto.

(j) The plan approved and recommended is neither the plan adopted in 1936, nor filed with the petition, nor is it a partly performed plan, but it is a modified plan, approved by the Master "as fair, equitable and feasible," without being submitted to the creditors or being modified as required by the Act.

(k) The plan recommended and approved by the Master is a new or modified plan, which has not been submitted to and approved by creditors, nor submitted to and approved by the Court. The proof affirmatively shows that mandatory requirements of the plan have been omitted and acts and payments prohibited have been done and paid, and the Master now approves such plan as being in his judgment an honest effort to carry out the original 1936 plan.

(l) The finding that "the City entered into an agreement with each of them (C. J. Root and Fiduciary Counsel, Inc.) . . . and further agreed that it would not resort to bankruptcy," is an affirmative and positive finding that the alleged Plan of Composition was deliberately and

knowingly waived and abandoned by a solemn agreement in writing executed for a valuable consideration. Section 4 of the plan, if in effect, would prohibit this contract, as it provides "whenever any such bonded indebtedness has been or may be reduced to judgment it *shall* be refunded hereunder in the same manner and upon the same terms as though it had not been reduced to judgment. The finding in effect is that Section 83 (j) of the Bankruptcy Act relates to any prior plan of adjustment or composition and any such plan may be revived and enforced in its original form, notwithstanding departures therefrom, and modifications thereof, and non-performance thereunder. It is insisted that an original plan may not be waived or modified, with intervening rights accruing, and then reinstated, omitting such modifications, and imposed upon some creditors who will receive less than other creditors who were preferred during the period of abandonment or modification. The right to invoke the Bankruptcy Act does not include the right to reassert an abandoned or modified plan not in process of completion at the time of the filing of the petition, especially if the debtor has not and cannot carry out its provisions.

2. This Creditor objects and excepts to the Master's finding of fact numbered 3, that creditors holding more than two-thirds of the aggregate amount of the claims of all classes consented, because creditors were prevented from examining witnesses as to the validity of these consents, and there is no affirmative proof of their validity in the record, other than the filing of same.

3. This Creditor objects and excepts to the Master's finding unnumbered, that the American National Bank is not a holder in due course of the coupons on which it files its claims, for the reason that the coupons were accepted by the Bank on July 12, 1940, at a time when the Bank

had knowledge of the Plan of Composition, which contradicts the express finding of the Master that the American National Bank holds the coupons as pledgee, and that the coupons attached to bonds were pledged prior to June 12, 1940, on which date, and a few days before the petition was filed, bonds to the amount of $225,000.00 were by the Bank returned to Wright, "and that at that time all coupons maturing prior to June 15th, 1940, were detached and retained by the Bank as collateral security." This finding affirmatively shows that both the bonds and coupons were pledged prior to June 12, 1940, and that coupons were "retained" which nullifies the later finding of the Master that the coupons were "accepted on June 12th, 1940, coupons which were then past maturity," as the record shows no new pledging, new loan, etc., but simply a reduction of indebtedness and surrender of part of the security.

This finding is contradictory and also contradicts the record, which shows that these coupons were accepted by the Bank prior to that date. (See testimony of Roberts, p. 1088.

4. This Creditor objects and excepts specifically to the finding of the Master that the Plan of Composition offered by the City is a partially completed Plan of Composition within the meaning of Section 83(j) of the Bankruptcy Act. The undisputed proof shows that a plan of voluntary adjustment was declared in effect on or about the first day of October 1937, but no attempt was thereafter made to continue under and complete this alleged adjustment, which was openly abandoned, and thereafter each refunding was solely on the basis of the best trade possible, and not under any plan.

5. This Creditor objects and excepts to the Master's report on the ground that it fails to find as follows:

(a) That the plan sought to be confirmed is not a partially completed Plan, openly arrived at and devoid of subtle over-reaching.

(b) That the plan sought to be confirmed does not comply with Chapter 9 of the Bankruptcy Act, and is not a fair and equitable bargain.

(c) That the alleged plan of composition adopted in December 1936, modified September 4, 1937, was shortly thereafter abandoned and not revived, until the filing of this proceeding in 1940.

(d) That the City of Coral Gables did not attempt to carry out the plan in good faith, but departed therefrom in that it

(1) Failed to collect and realize monies, both from current and delinquent taxes as it was obligated to do,

(2) Failed to levy and collect taxes as it was obligated to do,

(3) Failed to follow the usual statutory methods of collecting delinquent taxes,

(4) Failed to use all available funds which it contracted to use for debt services but diverted same to other purposes.

(e) That the Document of December 24, 1936, (defendant's Exhibit 3), the Barker Contract, (defendant's Exhibit No. 2) and the Exselsen Contract (defendant's Exhibit No. 1), constitute and are three separate, distinct, and material modifications of the proposed Plan of Composition, which were never submitted to and approved by creditors

as provided by the Bankruptcy Act, and the Plan now attempted to be enforced has never been submitted to and approved by the Court as a Plan of Composition.

(f) That payments made by the City, both voluntary and under mandatory levies to preferred creditors, being in addition to the payments provided in the proposed Plan of Composition, disclose an ability to pay, larger than alleged in the petition.

(g) That the City of Coral Gables failed to state material facts and made actual misrepresentations in the petition filed in this cause in violation of the Bankruptcy Act.

(h) That the sale of assets to Coral Gables Development Company was a departure from and in violation of the proposed Plan of Composition, and the use of funds realized thereby resulted in a preference to certain creditors of the City of Coral Gables.

(i) That creditors who deposited bonds with the Barker Committee received $504,938.25 as interest, which was not paid to other creditors, and no attempt was made to equalize this payment to non-depositing creditors.

The undisputed testimony, and especially the cross examination of City Manager Shaw, (Record pages 660 to 765—See pages 760 to 763) support the foregoing.

Wherefore, this creditor moves the Court that these objections and exceptions to the report of the Special Master filed May 8th, 1942, be sustained.

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Portions of Argument of Morton B. Adams, of counsel for Petitioner, on Objections and Exceptions to Report of Master, filed August 19, 1942, in words and figures as follows, to-wit:

Now, to get back to the petition. In answer to the argument that there never was a plan of composition with the city, that the city has just followed a plan of adjustment or general this, that or the other.

The Court:
Do you contend that the Exselsen June contract was part of the plan?

Mr. Adams:
No, sir. We contend that that was not part of the plan. We contend that the contract entered into with the bondholders and creditors in the instrument that is dated December 24, 1936, is not a part of the plan; that the contract with the Barker committee is not a part of the plan; but that the plan is confined to the two ordinances, Ordinance No. 269, passed in December of 1936, and Ordinance 289, passed in September of 1937.

The Court:

I suppose you claim that the September Ordinance was involuntarily enforced upon you?

Mr. Adams:

It was an amendment to the original plan to conform to the rulings of the State Courts as to what properties could be taxed for the servicing of these securities, the refunding securities.

Now, at the time, 1936, efforts at refinancing were undertaken. There was no bankruptcy law on the statute books, no valid bankruptcy law. The bankruptcy law, the first Wilcox bill, had been held invalid, and there was no law, and it was not reenacted in the present form until August, 1937, so that this plan was gotten up in a time not in anticipation of bankruptcy.

We contend that it is not essential that it should be, and in the first paragraph of the petition we show very clearly. I think the plan that is submitted—it is not long, and reads as follows:

"1. Your petitioner further shows that in December of 1936 The City of Coral Gables proposed to its creditors, the holders of bonds interest coupons and other debts, a plan of composition of its debts providing for the exchange of new evidences of indebtedness, which said plan of composition was designated as 'Readjustment and Refunding Plan of 1937', wherein was set forth the terms upon which bonds, interest coupons and judgments and other debts of said City might be compromised and evidenced by new forms of indebtedness, which debt readjustment and refunding plan is fully set forth in Ordinance No. 269, adopted by the City Commission of The City of Coral Gables on December 23, 1936, a printed copy of which is filed herewith marked Exhibit '1', and by reference made a part hereof; and that on the 4th day of September, A.

D. 1937, The City of Coral Gables enacted Ordinance No. 289, modifying the plan of refunding set forth in Ordinance No. 269, copy of which Ordinance No. 289 is filed herewith marked Exhibit '2', and by reference made a part hereof. After the adoption of Ordinance No. 289 the petitioner procured the agreement of most of its creditors to the modification of said plan, which was made necessary by the ruling of the Supreme Court of the State of Florida in the proceeding for the validation of the said refunding securities."

Now, that is the plan that is now before your Honor for confirmation. We contend, just as the Master found as a matter of fact, that these other documents, the printed contract that was used in getting agreement with creditors and the special contract with the committee and the Exselsen contract, were not a part of the plan, but were contracts and agreements made prior to the complete set-up of the plan, and were not obligatory upon the creditors to force the creditors to take the plan that was finally modified in September; that after its modification, they did go ahead and make exchanges, and that those exchanges are the only evidence of their acceptance of that plan.

Now whether this plan is fair and equitable and does not discriminate unfairly against any creditor or class of creditors is a question for your Honor to determine on the face of the plan. It is a question which the Master considered upon the face of the plan, and he found that it was a fair plan, and did not discriminate against any creditor or class of creditors. In this case, by the way, we have only one class of creditors. The creditors have only the one source of payment of their obligations, and that is the ad valorem taxes that the city has the power to levy and collect.

Now, as to whether these other documents are part of the plan or departures from the plan, or show abandon-

ment of the plan or what-not, we do not think that there is much question to that. The Master found in his Finding of Fact on page 5 that these contracts, the first one, the printed form dated December 24, 1936 for signature by holders of bonds, the second contract with the Barker committee in February of 1937, and the third contract with Exselsen—he found that they were all steps taken in a bona-fide effort to bring about the acceptance of the plan of composition, and he also found that the continued exchanges of securities with certain creditors were made in good faith in an effort to bring about the acceptance of the plan of composition, and he further found, as a matter of fact, that the settlements with purchasers of obligations that the dissenting creditors talked so much about, were all made with funds that were authorized and permitted to be used by the city under the plan in the purchase of securities; that they weren't purchased with funds that are listed in this Section 19, the funds which, under this plan, are pledged to the creditors. He found that all of those purchases were bought with funds that were not the Issue of January 1, 1937 Fund, not the Sinking Fund, were not the Tax Participation Certificate Fund, that they were not the $500,000 Fund for the purchase of bonds in the first ten years; but as a matter of fact, none of those funds pledged to the creditors under this plan were used in the purchases that they complained so sorely about.

Now, while that was going on during the summer of 1937 when the city did not know whether it was going to have any refunding bonds or not, on that theory your Honor asked a very pertinent question during the arguments concerning the creditors, about the status of the contracts with the creditors for refunding—whether when the bankruptcy act was enacted and became effective in August, 1937, the city had contracts under which it could have gone into bankruptcy. The contracts themselves show that they were contracts under which it could not

have gone into bankruptcy. They were contracts for the exchange and delivery, immediate delivery, of refunding securities, as I recall the argument of opposing counsel, what he said we should have done was to just have thrown those contracts all overboard, and gone into bankruptcy. I don't know where they expected us to get the agreement from the creditors to go into bankruptcy instead of taking the refunding securities immediately, but we had under this record in August no contracts under which we could have gone into bankruptcy. There was this very situation which your Honor knows. When that section of the bankruptcy act was enacted, there was just as much doubts of its constitutionality and validity as there was at first, and it was not until sometime early in the spring, I believe, in 1938, before that second bankruptcy act was held to be a valid and constitutional piece of legislation.

Now it was under this situation that the city elected, as it had a right to do, to go ahead and carry out its plans for a voluntary refunding of its indebtedness, and it did go ahead in September, and another ordinance was passed amending the original plan to make it conform to the requirements of the State Courts, and offered the securities to its creditors, and they were in the latter part of September executed, and actual exchanges of approximately 90% of the total face amount of the bonds were made and carried out that fall. Now that is the plan of composition. That is the plan which was offered to the creditors at that time, and it is here in this Court now.

Now, with all those difficulties going on, with all those suits piling up and the Supreme Court of the State not handing down its opinion until July, this contract was drawn up with Exselsen. The Exselsen contract, Defendant's Exhibit No. 1, is an agreement merely defining the services which Exselsen had already been performing in carrying out the service which he was obligating himself

to perform in the future, setting forth the contingent fee which he was to receive upon the execution of a 90% or better in the exchange, the voluntary exchange of securities, and when and how the fee and his expenses were to be paid.

This paragraph relating to the services that he is to render that they contend shows an intention to depart from the plan of composition—we contend that that is no departure, but is a provision to set up machinery to attempt to carry out the very provisions of this plan, and an attempt to work out a sale of the delinquent tax assets which were released and relinquished to the city under the very terms of the plan itself, placing upon the city the obligation to realize something, and to make retirements with those proceeds during the first ten years of the plan; that the city did not realize one red penny, did not want any; did not realize one red penny on those delinquent tax assets.

Suppose they had attempted to enforce it to foreclosure, as was done on the 1928, 1929 and 1930 years' taxes, and there had been the same result, that they had been declared invalid and void under the plan before you, the city was obligated to make a special and additional and supplemental levy of taxes over and above the six mill minimum levy to raise funds to make retirements set forth in Section 12.

Now, Exselsen obligated himself first under that contract to use his best efforts to endeavor to sell and liquidate those delinquent tax assets by a sale, just as is set up in the plan that the city is going to do, and he was authorized at that time—there were no other funds the city had—no other funds to negotiate purchase of securities with those funds. Now it does not say in the contract that those negotiations shall be with those funds, but he is to negotiate terms of purchase of securities. The record shows that the purchases were made with three different

classifications of funds. I call your attention to Defendant's Exhibit No. 8, where the purchases are all listed. First, the funds derived from the sale of these delinquent tax assets which were actually sold, cash money delivered to the city for the evidence of those delinquent tax assets during the fiscal year 1937, and according to the specific provisions of the plan, if they were sold during that year, the proceeds of the sale were free of the obligations of those refunding securities. If they were sold after January 1st, 1938, that then 60% of the proceeds of the sale would be obligated to the purpose of servicing these refunding securities, and 40% of them would be available to the city for its own use, for paying expenses and anything else that the city might want to do with it, so the Exselsen contract was a contract delegating him and limiting his compensation for rendering servicer in carrying out one of the specific provisions of this plan of composition.

Now, it was carried out. That was a major portion of the money used by the city in the purchase of securities as set up in Defendant's Exhibit 8. The proceeds of the sale of these delinquent tax assets were handled in spirit, and literally, according to the wording of this plan.

The second was some small amount of general revenue, and the reason that they are put in there is that, listed in this Defendant's Exhibit 8, are settlements of lawsuits that were under peremptory writs, voluntarily purchases of obligations that were not in suit, and every class of acquisition by the city of bonds, coupons that were outstanding, and then there was included in their purchases, for the account of the trust fund of the city, a fund in which the known creditors had no interest or any right at all, a fund which the city had a right to invest in its own securities as well as in any other securities.

That is the contract. That is the operation that they contend was such a departure from this plan. It was not a departure at all. It was trying to carry out the plan. Let us see what the effect of that was.

The purchases of these outstanding obligations of the city are, as stated by the dissenting creditors, special adjustments. They love to call them special adjustments, preferences, unfair discriminatory settlements, and all such objectionable words in bankruptcy. They all sound bad in bankruptcy, but when you got down to it under the terms of this plan you must distinguish between a municipality and an individual. A municipality is a dual financial institution, a dual personality. It has finances that the creditors, bond creditors, general creditors, can't reach. They are obligated to carry out governmental functions, and that is what they have to do. That is something that I will go into detail later on.

These investments by the city of these funds did not deplete in any manner the assets and the tax collecting power of the city which was pledged to the creditors under this refunding plan. There is how you test the equality of treatment. There is your test as to whether the purchases by the city affected unfairly and discriminatorily these creditors. They did not deplete that at all. They did not deplete it. They not only did not deplete the tax collecting power—and that is all that is pledged under this plan to the creditors, the power to raise revenue by taxation for the payment of these obligations, refunding obligations— that is all that is pledged under it. No dollars on hand, no money on hand, owned and held by the city is pledged to these refunding securities. All that is pledged is the power of taxation. We did not put the plan into effect until after the first half year had elapsed, until after the first coupons on the refunding bonds had been past due, and it was paid in cash. All that is pledged is the future taxing power.

Now, let us see what effect these settlements had upon the taxing power prior to the going into effect of the plan in September, 1937. There had been entered in this Court five peremptory writs of mandamus requiring the city to

service the full amount of the judgments over a period of six years, and to pay interest on the judgments, and to pay 1/6 of the principal each year. They called for a millage of 2.68 to service, those five judgments. There were other judgments pending that had not reached the stage of fixing the spread of the levy that it would take to service them.

The settlement that is so much complained of with the Fiduciary Counsel, Inc., and the $8,000 par value payment that Mr. Walton objected to to the Fiduciary Counsel, Inc., was a part of the agreement with the Fiduciary Counsel, Inc., under which agreement this peremptory writ of mandamus was modified, and that modification of that peremptory writ enabled the city in the first year of its refunding to cut this extra earmarked millage by the amount of 1.59 mills.

Now, with all of these other judgments pending, and threatened suits by bondholders who held matured obligations during the years 1937 and 1938, during that fiscal year this record shows that the purchase of securities by the city with these other funds, that is, funds not pledged under this plan, saved the city from potentially, probably very likely, the threat of six mills earmarked special tax levies under writs of this Court for the year 1938.

In other words, if the progress of the common law suits which were already pending in this Court had gone through in the same manner that those had been terminated by the issuance of peremptory writs in August, 1937, by July 1st, 1938 there would have been more than an additional six mills of debt service levy upon the city to service those obligations.

Now the city spent those funds, which under this plan were realized or released to it for its own use, in acquiring those obligations, and in avoiding and preventing that earmarked tax levy that would have been a one hundred percent increase over the minimum debt service levy involved

in the plan, and that was, I think, instead of depleting the assets available to these creditors, helped and benefited these creditors as much as it did any other creditors. It helped and benefited the very source from which they would expect to get paid, and helped the very source from which all the others would expect to get paid.

Now, if your Honor pleases, I have already read a quotation from Thomas v. El Dorado Irrigation District. We have numerous decisions and we find nowhere in the law of voidable preferences, any phase of the bankruptcy law that set them up as unfair discriminations within the limited provisions of the law, only as a preference recoverable as a voidable preference. We can find no decisions where a private bankrupt, for example, an individual, using exempt property in a preference to a creditor. The portion of the property which is exempt under the law, is not recoverable under the voidable preference law. One of the essential elements of a voidable preference is the depletion of the assets of the Estate that are available for the creditors.

They have talked long and loud about this fundamental principle of bankruptcy. I think I put down a quotation of it. 'The equality of treatment of creditors.' Yes, equality of treatment of creditors. That is equality of treatment of creditors out of the assets of the bankrupt or petitioner, which are appropriated by the plan to the creditors. That is the equality of treatment that must be afforded, and that is the equality of treatment that we have afforded in this plan, and that we have given them in this plan.

There has been no criticism, that I recall, in the argument, of the contract with the Coral Gables Development Company. There could be none. The City had a perfect right to sell its delinquent taxes—

The Court:

As I understand it, their contention about that payment of certain creditors out of funds available, but not subject, under the plan, is that I gathered that the distinction they make there is that you are not entitled to put that limitation on funds available under the plan. They say that you have not, as against the other creditors, the right to pay off some creditors from any funds belonging to the others, and that you disturb the equality of treatment by that. They hold that, because you say that you have a plan, and that, as part of your plan you eliminate a certain source of revenue or assets, just because you eliminate that, as a debtor and thereby make everybody equal on that basis, you contend that they have no complaint. If the law is that a debtor cannot take its funds—as part of its assets, whether it is appropriated or not under a plan—their position is that you can't take funds that belong to the debtor and prefer one creditor and then still say that you are preserving equality.

Mr. Adams:

Well, they say that you can't do that. They also contend that there is no such thing as the dual financial capacity of the City. They say the exact contrary to what the Ninth Circuit Court of Appeals said in the Thomas case.

In the Thomas case, the plan provided—and that case is much stronger in favor of us than is necessary here—as a fundamental principle under this plan, what is given to the creditors is a new plan of taxation in the future. That is all that is given under this plan of composition. A new plan of taxation, and as long as these creditors get the full benefit of their new plan of taxation, to raise revenues in the future, they are getting what is coming to them under the plan.

Now, in the Thomas case, that I just read to your Honor from, they had borrowed money from the Reconstruction

Finance Corporation, with which to pay a present cash consideration to the creditors, as the composition of their debts, of 50½%. While they were trying to work that out, and while it was in the process of being carried out, the District, according to the record, paid one of them 82½% on the dollar, in cash, and the Court of Appeals said that that was not a preference that would prevent the placing into operation of this plan of composition to pay off creditors existing as of that time, in the amount of 50½¢ on the dollar, the original amount set up in the plan.

The Court:

Let me illustrate just what I understand. I may not have caught the significance of their argument. Here is what I understand their argument to be on that. Now, listen, let's put it as a concrete case.

Suppose that out there in Coral Gables, from the standpoint of the betterment of the community and the entertainment of its residents and for one reason or another, it is decided that the Country Club is not to be regarded as a source of taxation. Well, that is not a good example—that is owned by the City. Let's take another one. Let's take the Biltmore. Now, suppose that the City says, by councilmanic action, that they think that the Biltmore is so outstanding as an attraction to the City, that they are going to submit a plan to all of their creditors who are interested in the welfare of the city, in the building up of the city, and the fact that the more people they can get to come to Gables the more the property is improved, and the more sources of revenue they will get for taxation, which is to their interests. Now, they say, "We think that we are about to lose the Biltmore and we are going to propose a plan by which we are going to eliminate the Biltmore. We offer that to everybody, without discrimination. It is proposed to everybody. It is our plan." And then, a year after that, before any petition is filed, the

City decides to sell the Biltmore. Now, their contention is, as I understand it, that those funds that were taken from the sale of the Biltmore and were utilized in preferring certain creditors over their representation—that you can't say to them that just because you have eliminated that from your plan, which provides, theoretically, for equality, then you can't come along afterwards and take that source of revenue and raise funds from it by the sale of that property, and take that property and say, "That is mine, and I have got a right to prefer somebody else."

Now that, as I get it, is an apt illustration of their contention. That is what I have gotten from their contention. And it seems as though there were some equity in there.

Mr. Adams:

The way I have thought of it is that the question of exempting from taxation a piece of property, runs into other problems.

The Court:

Well, now, draw it down more to your particular case. As I understand it, their contention is: You say, "We have eliminated all of these tax participation certificates." Isn't that it?

Mr. Adams:

No, the tax sales certificates.

The Court:

"We have eliminated that. And we treat all of our creditors alike, because we have eliminated that." Now, they say that you are not entitled to subsequently take funds that come from the sale of those tax sales certificates and prefer certain creditors. Now, your answer to that is that you have the right, because in the beginning you

have eliminated that from your plan, and that you are entitled, because you set up a right within yourselves, to take the funds that come from those tax sales certificates—because you have eliminated them.

Their position, which seems to me to be more equitable, is that just because you have eliminated it from your plan, doesn't deprive the creditors from their right to say to you, "No, you can't prefer some creditors that are of the same class as we, and take other funds that belong to you and justify your actions just because you have eliminated it from the plan."

Mr. Adams:

Yes, that is what they say. But there is no such limitation or provision as that in the law, and the law, as construed by the Court, is that such a payment, such a purchase—and we contend, now—that those assets were freed to the City for its own use, and in substitution of them was an obligation to levy additional and supplemental taxes over and above the minimum.

The Court:

But what is your justification for setting up that proposition that they are free for your own use? It is because you say in the beginning that you have eliminated that from your plan. Therefore, it is your right.

Mr. Adams:

Our justification for that, your Honor, is that the City may function and remain a city attractive to new incoming people and may grow and enlarge itself and may pay the debtors anything at all. That is the justification. It is done for their benefit.

The Court:

Theoretically. But when you depart from that, and use those funds for something else, haven't you departed from your justification?

Mr. Adams:

No, because what we have done has accomplished the very purpose of the thing, and has resulted in benefit to them, as well as the others. They benefit from it. In the Avon Park case, the fellows that benefitted there were the ones voting it through. The securities that participated in these preferences—which, under the bankruptcy law are not objectionable unless made within the terms of the law, there is nothing objectionable to a preference—under the Avon Park case, they were the ones that were voting the plan through. The people who are voting this plan through, the holders of refunding securities, refunding bonds and tax participation certificates—did not participate in these alleged preference handlings.

Some of these creditors—and there are really only three dissenting creditors—Mr. Wright and his associates, and Root and Fiduciary Counsel—and they all participated in these financing efforts of the City out of sources of revenue and out of assets that were not pledged under the plan, in a temporary taking care of the financial situation of the City, to preserve it for the benefit of the citizens and these creditors and all other creditors.

Of Counsel for Mr. Root:

Don't you want to reconsider, for Mr. Root? I don't believe he participated.

Mr. Adams:

Mr. Root participated in this way. Mr. Root's agreement, which we defaulted under, covered bonds in judgment, upon which judgment there was a pending alternative writ of mandamus to be considered by your Honor, plus other bonds which, since the institution of the suit, had some of them matured and others were maturing

within the life of the agreement. And they were included in the earmarked tax levy, along with the amount in the judgment, and were serviced temporarily.

Now, that was a voluntary earmarked tax levy by the City, as to a portion of the obligations used by Mr. Root. A voluntary using of taxing power, which was not pledged under this plan of refunding. That is the way they come into this picture, as to all being in the same boat. Whether the City uses a taxing power that is not obligated under this plan, or uses funds that are not obligated under this plan, to save the financial life of the community for the benefit of everyone, doesn't matter. They have all used some of it and gotten some of it in these efforts of the City to avoid bankruptcy and to make this refunding a going thing for the benefit of everybody.

The Court:

Well, now, yes—but I don't see—I am just thinking out loud. Don't anybody present take anything that I say during this argument as being of final conclusion as to how I feel about the case. Because I am just feeling my way. Now, you start out with the proposition that there was a justification because of the hard times and the years of depression and the terrible burden that the City had, as justifying a certain plan, which was peculiar in that it eliminated a certain asset. All well and good. Now, let's stop right there and say, "That is okay. You are justified, you offer a plan which is justified"; and it is a plan which a municipality may adopt in the beginning, but which is contrary to anything which any individual or corporation might do. Any corporation coming in under the old 77-B, or under the present chapter, or any individual having to go into bankruptcy and say, "Mr. Creditor, I am going to offer you a plan and I am going to give you 80% of my assets, and I am going to treat you all alike in that 80%, but I am going to keep out 20% over here." That just don't go at all, does it?

Now, a municipality is a peculiar situation. It stands on a different foot, and you start out with an initial proposition that there was a justification for the withholding from all the creditors of a source of revenue which they ordinarily would enjoy, that is, tax sales certificates. That is an asset belonging to the municipality which bonded creditors had a right to look to, along with current revenue from tax sources. Isn't that right? That is the original proposition.

Now, let's get beyond that and say, "All right. Let's put a peg there. There is justification for that. Now, the next proposition is, how are you going to treat all of the creditors, essentially? I think everybody agrees that there must be a fair treatment to all. Now, I am not asking you, or suggesting that you shift your position to conform with any temporarily entertained views that I have now expressed. Because you have thought about this far more than I. And your views are entitled to much more consideration than the temporarily considered position that I am now taking, or that I now announce. But, if you attempt to justify—I will put it as a conclusion and you may contest that—an unequal treatment of different creditors, on the grounds that you had the right to do that, because you were using an asset which was deleted from your plan—I think you have a far weaker case, a less strong and much weaker case under that theory than you would have under a theory of saying, "Well, now, here—we adopted a plan back there in December of '36. Now, there wasn't any bankruptcy law under which we could file at that time, and we say that that was equal toward all, and everything that we have done after that was not so much a part of the plan, but we justified everything that was done after that, because of the unusual conditions and exigencies giving rise to that." In other words, it seems to me that your case would be stronger if you looked at it from this angle, and say: "We were pressed,

we were hard-pressed, we were being sued, and we adopted a plan. And we had employed Mr. Exselsen, and he had been working on it before it ripened into a final written contract in June of 1937. He suggested this plan and it ripened into an Ordinance in the way of a Christmas present—a couple of days before Christmas in 1936—and then we put out another formal document a couple of days later and we went in pursuance of it, and in February following, we got this organized, and submitted it to the Chairman to do something with it, and they turned it into an agreement, and we made a step there. That was consistent with our plan. And it is true that we may have gone kind of far in agreeing to give them some interest from that point on, but we were doing the best we could. We were a hard-pressed duck. And then in June we entered into a written agreement with Mr. Exselsen, which was more or less—I am doing a lot of talking now without having read any of the record—but you go on in June and you make an agreement with Mr. Exselsen whereby you employ him as your representative to bring some more creditors in—and you say, "It is true that we may have provided in there that he could use some sources of revenue from deleted assets, from this plan that we had proposed—but, anyway, Mr. Exselsen did a lot of dickering with these creditors who were sueing us, and when he brought about some settlements, we made the best kind of settlements that we could, and they were all consistent with that original plan."

Now, it seems to me that your case is stronger on that theory than to argue to me that you are justified, and admitting that you deleted something from the plan, admitting "we took money that came from a revenue from that deleted asset, and we admit that we did prefer some creditors. We say that we were justified in doing that, because we were using an asset which we had a right to do, because it was deleted." In other words, you are

justifying your statement of a right, because of your statement that you deleted it, and you deleted it from everyone in the plan.

At this stage, I just don't listen with much favor to the argument that a municipality has the right, which right arose from its justified deletion of an asset from a plan of reorganization, and then, having established that right, to thereafter take a new step, and with that deleted asset, say to these creditors, "Well, we have taken that asset and we have dealt with other creditors and we have favored them in the results, but we say that we were justified in doing that, because we were dealing with something that we had a right to spend, as we saw fit, and those creditors had no right to quarrel with what we did.

Mr. Adams:

As I get your Honor, there is very little difference from my theory and attempt to present the matter, apparently, until I read the authority of the Ninth District that seemed to show the right.

Now, we admit—and your Honor saw and participated in a part of our throes of difficulties in 1937—and very appropriately entered Orders and Preemptory Writs enforcing the strict legal rights of these creditors. That is what we were up against. Now, we did go on. We were under all of these troubles and difficulties, and the net result of what we did, through those times of stress and strain, did benefit these creditors just as much as any of the rest of the creditors. They are still getting, and are going to get, just what the plan provided for them.

I am not absolutely sure that I get your entire position. I think, under the law, that that is the reason for those provisions in the law that I read to you. That it could contain provisions not inconsistent with this act. That the City, as a municipality, contemplated and is expected to own and control some of its securities, and those provisions,

together with this entire picture, and, I believe, the Master's findings in regard to these particular contracts, and these operations by the City during the refunding period, are in accord with what your Honor has said—that they were an effort to avoid bankruptcy and to bring about the completion of this plan of composition, that was not in conflict with it, and was not an abandonment of it—but were part of the processes of working toward that end that would be of mutual proportionate benefit to all of these creditors.

The Court:

Let me ask you another question. Do you maintain that these settlements that were made of which the creditors complain were all made under the stress of circumstances of where there were suits? In other words, was, in each one of these settlements a settlement of some litigation either where a judgment was being sought or where a levy was being sought mandatorily?

Mr. Adams:

With the exception, your Honor, of a very small amount of the purchases of old bonds, all of them were in one of the three classes. There was an alternative writ pending; in the same year a peremptory writ had been issued and we purchased a portion of the judgment in the Fiduciary Counsel case. Mr. Walton remarked about the $8,000 payment at par. That was a part of the adjustment of the peremptory writ of mandamus that your Honor issued to service the Fiduciary Counsel, Inc. judgment. At that time we purchased from the Fiduciary Counsel $10,000 in bonds that had not yet matured, the matured coupons from which were in that judgment at fifty or fifty-one cents on the dollar and we also made a payment on account of the judgment to reduce the amount that would be serviced by those adjusted terms of the peremptory writ. Then there were purchases of suits that were pend-

ing but had not reached the status of judgment; there were purchases of securities that were being sued upon in mandamus causes of action but had not reached the status of peremptory writ and there were purchases of blocks of bonds some of which were past due and matured, all of which had matured coupons with them and were in the hands of parties who refused to accept the terms of the refunding and yet would not sue on all their matured obligations and place them in judgments and press the causes to peremptory writs of mandamus.

You may recall that I referred to the result of these purchases, analyzed in defendant's Exhibit 8, which shows all of these purchases, shows that there were sufficient matured bonds and coupons. These were prior to July 1st, 1937, on the basis of the spread that your Honor fixed in the summer of 1937. That is your spread to service the whole judgment, and they required more than six mills earmarked tax levies to service all those securities under that precedent set in the summer of 1937 and that is what these funds were used for, the benefit of the entire financial picture of the city, an attempt to avert and avoid in the second year, the second fiscal year of the refunding and debt service levy under the plan, which according to our theory would have been slightly under 6 mills because a portion of the bonds being in service by earmarked levies of approximately 6 mills, and an additional earmarked levy of 100%, an increase of the debt service in the first year, 100% increase of the millage. Now that was the situation that the city was up against. It was a situation that threatened the position of these dissenting bondholders, threatened the value of their securities, their old bonds, threatened a situation of the exchanges or the situation of the holders of the refunding securities and threatened to put the city right back into the same position the city was in before. Our position is that those securities that the fund used for that had been released

from this plan, that they were not a part of this plan, that this plan dedicated and appropriated to the servicing of these refunding securities the future taxing power of the city, with one exception and that was the interest payment for the first six months' coupons accruing thereunder, from January 1, 1937 to July 1, 1937, which was to be paid out of the debt service tax levy of the prior year. From then on the plan pledged nothing but the future taxing power of the city.

Now to go back just a little to my proposition yesterday and to cite some authorities on my proposition that only those assets which were derived from tax levy and appropriated for the payment of the debts of the city under the plan are subject to the bankruptcy proceeding, in a very recent case in the Fifth Circuit of Evergreen Farms Company v. Willacy County Water Control & Improvement Dist. No. 1, 124 F. 2d 1, the Court had this to say regarding what was the estate of the bankrupt under the municipal bankruptcy law and what jurisdiction the bankruptcy Court had:

"Such a corporation has no estate or assets, generally speaking, but is dependent for the payment of its debts upon the power of taxation. Whatever adjustment of its affairs are made in such a proceeding as this must be carried out either by refinancing, which is the method used here, or by the substitution of new obligations to its creditors. In either case, payment can be had only through taxation or special assessment. In the present instance the R. F. C. has agreed to lend sufficient money to pay creditors 35¢ on the dollar and to take new bonds as security therefor."

Now in our case we are refunding with new securities we pledge the future taxing power of the city. The question in that case was whether a bondholder could offset

a debt which was owed to the district and the Court decided that they could not offset a debt owing to the district because in doing so there would be a depreciation of the assets of the district which were to be paid to the bondholders as a part of the plan of refunding. In other words that there would be less money to pay the bondholders who were forced into the position in this composition than there would be if it were not made.

The question of the jurisdiction of the Court in bankruptcy was before the Ninth Circuit Court of Appeals in the case of Taylor v. Provident Irrigation District, 123 Fed. 2d 965, and here is what the Court said about the jurisdiction in a case where the bondholder claimed he should have been paid instead of some other bondholders being paid prior to the presentation of the plan of composition:

"To agree with appellant's argument it would be necessary to accept the proposition that a plan is unfair if it does not undertake to rectify past errors in administration, although neither the district nor any present creditor in any way benefited from the error. We think the fairness of the plan is not to be so gauged. Possibly the holder of the Taylor bonds might have had his action in damages against the district officials for wrongful diversion of the money then available; but however that may be, two wrongs do not make a right. The Bankruptcy Act places on a basis of equality all existing creditors whose claims are payable from the same source and in the event of bankruptcy the bonds of the district of whatever maturity and whether they have been registered or not are on a parity."

I call your attention to the case of Getz et al v. Edinburg Consolidated Independent School District, the Fifth Circuit, 101 Fed. 2d 734. We specifically rely on this

for our contention that a plan does not have to equalize funds in payment of interest to creditors prior to the time of putting the plan into effect. That was one of the criticisms of the plan in the Edinburg refunding and the Court held the fact that the plan did not make any provision for equalizing the distribution for the interest payments did not affect its fairness.

Now let us look at this question of these assets that we contend were taken out of the plan and were turned over to the city for its use, which we contend under the terms of the plan we could have used in bringing up to date the much needed repairs and improvements of our streets, our parks, and other things that would generally benefit the city.

The Court:

They do not complain of that. What they complain of, Mr. Adams, is that you did take the money and divert it and defraud some creditors. That is my impression from their argument, not from the standpoint of what you could have done,—not what you could have done, but what you actually did is what they complain of. Is that right, Mr. Walton?

Mr. Walton:

What was done; yes.

Mr. Adams:

We contend that the use of it benefited them just as much as it benefited everybody else and that under the authorities the fact that one creditor does not or who is not a creditor at the time of the petition in bankruptcy, does not have or receive one dollar more than the other creditor and does not prevent the composition. Another angle of that, not exactly in the same way but it goes to the fundamental principles, such as this: Suppose for

example that the creditors had been entitled through writs of mandamus to have reached those funds, the proceeds of the sale of these delinquent tax assets. If they had caught those funds with writs, that they were entitled to them. They did not catch them and they did not exercise what might have been a legal right to have those funds made available to them for their payment. The city has used them but we come now into a Court of Bankruptcy and a Court of Equity to see whether the actions of the city have been beneficial to the whole picture and beneficial to everybody or whether they have been prejudicial to these particular dissenting creditors.

In this case of West Coast Life Insurance Company et al vs. Merced Irrigation District, 114 Fed. 2nd 670, the Court said:

"It will be remembered, however, that under the first plan it was provided that 'no payment is to be made upon the coupons which were due July 1st, 1933, and that the payment of the bonds and coupons which were due January 1st, 1933, is to constitute in effect full payment of interest falling due during the entire year.' This policy has been continued through all of the subsequent proceedings. Thus it would appear that the charge of bad faith fails entirely, although the transfer of this $320,272.93 may have been in the face of bondholders' rights. We do not understand that every such error precludes the success of the composition. It is quite evident that the proportionate amount of this sum to which the dissenting bondholders would be entitled would be comparatively small."

Now there was a situation where the Court said the record showed that there had been diversion of $320,000.00 of the fund from the bondholders but that when they got into the Bankruptcy Court for the confirmation of the plan of composition, a very large percentage had accepted it, that those funds had gone for the benefit of the

whole picture and that that was not sufficient to upset the plan.

The Court:

Do you maintain, Mr. Adams, now that the settlements that were made, set forth on this certain exhibit 8, that those settlements made by the city were for the benefit of bond creditors?

Mr. Adams:

Yes; I claim that is the net result of it.

The Court:

Mr. Walton in his argument presents a proposition. He says that a cash settlement was made with one or more creditors leaving out that 100% settlement. He says that certain cash settlements were made the result of which was that they received largely in excess of what is now offered to these objecting creditors. Now do I understand that you maintain that under the conditions existing you admit his argument. If you contest his argument then I want to ask you on that. If you don't contest his argument, do you maintain that that which you did was not for the benefit just of those creditors giving them a preference, or that that character of settlement under all conditions was for the benefit of all creditors?

Mr. Adams:

Yes. I will answer that and then I will show where the premises are wrong.

In the first place under municipal bankruptcy the law recognizes the fact that the petitioner may own, hold and control some of its own securities and they are not permitted to be voted in the plan. The legal right to vote in the plan does not go to voting against the plan if the city gets 66-2/3% acceptance of the plan exclusive of

security held by the city; then the plan may be voted through. Now those purchases were not made to get the bonds to vote the plan through. Those purchases were not made for the purpose of giving that creditor preference and I will show you how the creditor had not been given any preference. Those purchases were made for the purpose of saving the financial life of the city at a time of great distress.

Now he says that they paid to those creditors a great deal more than we are offering him under the plan and I say the reason for that is that he is looking at the market value of those securities at the time that those transactions took place, and I submit to your Honor that you are not concerned with the market value of those securities at the time those transactions took place at all. If a holder wants to take what he can get for his securities today, that does not mean that because he got so much, so many dollars for them because the market value has fallen at that time, that there is any preference to the other holders or any difference in what we are offering them today. That is opportunity we are offering them under this plan of refunding, to take the refunding bonds, and to absolutely know that they are going to collect fifty cents on the dollar, plus interest, and that they will be retired according to the plan; that furthermore, they take a reasonable opportunity of collecting without interest the value of the other fifty percent of the bonds and a reasonable opportunity and hope and expectation, if conditions continue on the average over the balance of forty years of the plan as they were in the past ten years on the average, to collect a substantial amount of the interest due them. We are not concerned with the market value of these securities. The market value on those at that time might be from eight to ten cents.

Mr. Walton:

I don't care whether it is eleven cents. The only thing I am interested in is how much these fellows will get out

of this thing, and so far as your Honor is concerned whether it was fair and reasonable under the plan.

Mr. Adams:

Under the evidence that we have in this case, and according to the evidence, the opportunity to collect 100 cents on the dollar. On the other hand, if this plan quit giving the minimum debt service tax levy and did not give to the property owners the assurance, some assurance, as to how high taxes in Coral Gables are going to be, the town dries up and they don't get anything. What are their bonds going to be worth? Five cents on the dollar?

The old bonds back in 1930 and 1931 and 1932 were selling for just as many cents on the dollar as the TPC's are selling for now. The question here is that we have offered a plan and offered securities under it, under which they can get, if they hold those securities, one hundred percent more than these other fellows got in cash for theirs at the time they turned loose on them. That does not make any preferential treatment of those creditors.

What it does result in is an improvement of the financial condition of the city, and the record shows that these refunding securities covered from about the time it went into effect, from around forty to fifty cents on the dollar up to ninety-eight cents on the dollar while we were trying this case, and that is the benefit that they got out of these transactions. Because they were fair enough to reasonably assure the future financing and carrying out of this refunding plan by the City of Coral Gables these securities held by the dissenters have gone up the same way, in the same shape, so this question on the preference there does not amount to anything.

There in the Avon Park case all the Court was deciding was that the fiscal agent owned bonds, was trading in bonds, was trading in assets, and was getting paid too, and there was nobody in the world who could tell how

much money that fiscal agent was going to make out of it and he was the fellow who was voting the plan through; he was the guy that was putting it through, and that is all that case is. It has been cited several times to that effect and that, as far as I have heard from counsel, is the only authority that they produce to back up their position that our plan or what we have done under the plan is unfair discrimination and preference against them.

Now, you brought up a question, your Honor, and I will ask you have I covered what you have in mind?

The Court:
You have covered it.

Mr. Adams:
I am not going to ask you if it is satisfactory to you.

The Court:
No; I am not satisfied.

Mr. Adams:
We do not think that the law is as stated.

The Court:
I don't understand that the objectors' contention is by reason of the change of the value of the securities, or the market value, but their contention is, as I understand it, that in September of 1937, when the second bankruptcy act had been declared constitutional—

Mr. Adams:
It was not declared constitutional until the spring of 1938.

The Court:
Whenever it was enacted.

Mr. Adams:
It was presumed to be constitutional.

The Court:
I understand their contention is that before there was any exchange of securities under the Barker agreement that with the enactment of the law that the petitioner here had the opportunity to file under the act. Now, that is the reason I asked the question this morning as to whether at that time and in that exchange the required number of assets were in existence so as to justify the filing.

Now I understand their contention is that in September, 1937 there was no binding effect upon the city or the Barker Committee in the sense of an obligation to surrender the certificates, binding on the committee at a certain price. Was there a binding obligation on the city to purchase them at a certain price? I haven't read the agreement and as a matter of fact I am not very clear what was the effect of that agreement. I understand that an agreement was made in February, 1937. Now I have asked both sides what was the binding effect on either party and I haven't a very clear idea as to what was the obligation on either party right immediately before the exchange was made. I understand that the objectors' position is that with the exchange, with bankruptcy route open to the city, the city decided that it would go on the policy of settlement out of Court and then, having made that decision as evidenced by the fact that after this exchange of securities, there in September, the city had taken a definite stand that: "We are going now to negotiate with an attempt to settle with all of our creditors under the plan that was provided back in December, 1936 and we

have made progress in having negotiations with the Committee, and that is our plan."

Now the objectors say that you decided right at that time that you would take a certain course, one of two roads, either to go into bankruptcy or continue to affect settlement out of court.

Now then their position is that irrespective of the market value of securities, that within a month or so, right after that, settlements were effectuated, in which settlements received largely in excess of the value in a money settlement, largely in excess of what was offered under the plan adopted in December prior to that, and these objectors say, "Well, now, Mr. City, you have taken a position that you have elected to proceed along with your plan proposed in the ordinance, and you have effected settlements with certain creditors. Now we ask you to be consistent, and we say to you that when you come along and make settlements with certain other creditors, that you have been inconsistent and the law requires that you be consistent with all creditors throughout," and their position is that when you made those settlements independent of the market value and the change in the market value, et cetera, commencing there in the fall of—I don't know what the dates are but along in the fall of 1937—that you departed from the position which you had taken, and their position is, having elected to do a certain thing along this non-bankruptcy route to provide private settlement, that when you made that election, you should continue with that, and then when you come back and file a petition in 1940 and say, "Our plan is the plan that was adopted by the City Ordinance commencing in December, 1936," that there must be visited back upon you all that you ever did in the meantime and therefore they say independent of the change in value, of market value of securities, that you, the city, have been inconsistent. Now, I understand that is their position, and in that light you haven't answered my question.

Mr. Adams:

And we contend, your Honor, that is not inconsistent with the plan.

The Court:

I want to be fair to both sides in this and here is what I have had in mind, and I may have the wrong understanding. I don't want to hold with the city's theory on this at this time, because on a more mature study and consideration of this case I may find that I am entirely wrong and that you are entirely right, but right at this time my thought is that if the city takes this position in answer to Mr. Walton's argument, because he is the first one who advanced that thought—I can't say that it is true, gentlemen, that they have also incorporated that idea. If you in your answer to their argument say, "Here, let us go back to the September, 1937 situation and see it from the standpoint of what the law was at that time and what the exigencies of the situation were. We have adopted a plan and changed by reason of this Supreme Court decision, by this other ordinance of September, 1937, but the plan that we have adopted is the plan set forth in the ordinance of 1936, December, 1936. We say, that is, the city says, that that plan is fair and equitable to all of the creditors and we admit that we did not include in that certain tax certificates which the city then owned; we assert that the basic plan, the basic idea of the plan, was to submit and make available to all creditors alike the future taxing power of the city. We say there was justification because of the situation." (Generally speaking, as you say, the city needed improved roads and streets and things of that kind.) "We say that there was a reason, basic reason, for our non-inclusion in the submitted plan of these tax certificates." Then you say at that time in December, 1936 that the first Wilcox Act had been declared unconstitutional—isn't that right at that time?

Mr. Adams:
Yes.

The Court:
You say that you proceeded then on the theory that there was no bankruptcy act in which the taxing agency could file, "and we were endeavoring to settle with our creditors. We went along and we had been negotiating for sometime with this Barker Committee and we effected some character of settlement, some written agreement with them in February. We were also being sued and harrassed with litigation and it became quite intense during the summer of 1937, and having this source of revenue which could come from the tax certificates, we resorted to a negotiation with a Mr. Exselsen in June, and we employed him to represent us in negotiating with the creditors, the harassing creditors, creditors who were enforcing their legal rights. (I might be more polite and say diligent creditors). Mr. Exselsen utilized, as it was given to him, this power by this contract, some of these funds which were not a part of this agreement or plan. Summer proceeds and the second Wilcox Act is enacted. Now, Mr. Walton, you and your associates say to us that with the bankruptcy court then opened to us that we should proceed." It seems that I find myself arguing instead of stating the position I am trying to state.

I may be all wrong about the theory, but it seems to me that best fits your case, Mr. Adams, but if you say, "Mrs. Walton, we could not have done what you say was the natural course for us to take at that time; here we were in a position to settle with a large number of our creditors and now it had whittled down to where that was less than 50% and we made a decision and we made contracts for approximately 40% with a number of individuals—and with other individuals, other contracts."

Mr. Adams:
With other individuals.

The Court:
At that time?

Mr. Adams:
Had contracts with the committee which covered less than 50% and a number of other individual bondholders approximately 40%.

The Court:
Making a total of how much?

Mr. Adams:
About 90%.

The Court:
At that time?

Mr. Adams:
At that time.

The Court:
That makes it worse for you the way I see it.

Mr. Adams:
May I explain those contracts to you right now, your Honor, if it won't interrupt you too much?

The Court:
I would rather get this completed. It seems to me that there is more justification for the objecting creditors' position, because that comes back to the first question I asked you this morning if the city in September, 1937 could have made settlements and did make settlements with the Bar-

ker Committee, and I don't know when they made it with the other 40%.

Mr. Adams:
About the same time.

The Court:
Why couldn't the city right at that time have filed under the bankruptcy act independent of Subsection (j); that is before you exchanged. Now, Subsection (j) provides for the inclusion of new holders, new creditors or rather creditors who have new exchanged indebtedness in form. These creditors say it is right at that time, if you wanted to come in under the bankruptcy act you should have taken the step right then but you elected not to do it. I think their position that you are not deprived of your position as against them at that time if it was fair and just—

Mr. Adams:
I don't get that.

The Court:
Let me reiterate that. If the city in September, 1937 could and did settle with as many as approximately 90% of its creditors and thereby at that time could have made these settlements obligatory on all creditors by reason of a bankruptcy proceeding, if the city had not done something in the meantime to create a preference, I think that the city even in May or June, 1940 when they filed, utilizing (j), could still maintain its position and say that this is a fair and just settlement among all its creditors. They say, "Mr. City, you not only could and did effect settlements with approximately 90% of your creditors but you continued your operations on a non-bankruptcy course, and you did give preference to certain other creditors, and we

say now, in June, 1940, that if you say to us, 'you shall come in and make that plan a binding force,' that there should be visited back upon you whatever you did of an inequitable nature destroying the equity of the scheme."

Mr. Adams:

These contracts to exchange were not enforceable contracts that the city could have carried into the Court for a specific performance because it was known and recognized by every-one that you could not get 100%. Some bonds are lost. There was left open the question of when the plan should be put into effect as a voluntary plan. That was to be determined at a later date when, as and if all of the other preliminary steps that were necessary to be carried out were carried out, so that we did not have in September when we amended the plan to conform to the State decision, a contract with the Barker Committee or with the others that could have been enforced by a specific performance. Furthermore, we did not have a contract with them that was an acceptance of the plan to be submitted into a bankruptcy Court under the brand new act. The contract we had with them was one that technically they could have stepped out of because we were forced to amend our plan as set up in December, 1936, in the December, 1936 ordinance by the city. We still had not decided upon the total precentage of those who were going to refund, that would make it safe to refund.

Now, they said that we should have gone into bankruptcy. Now, still nobody knows whether we could have gone into bankruptcy or not.

Now, there is a practical situation. In the first place there is no obligation upon a debtor in difficulty to avail himself of the bankruptcy law.

There was a question of election in the status of the law at that time. If we went ahead and made exchanges as it turned out in the West Palm Beach case, then we

could not use that bankruptcy law and that was everyone's opinion at the time, and we also were confronted with this proposition: The people who had agreed with us had agreed to accept refunding securities and the litigation under the old bankruptcy act had taken a number of years to go to the Supreme Court, and, as I mentioned, the new act was immediately attacked on its constitutionality, and it took months and months before it was finally decided and held to be constitutional.

Now the city took a chance and they took a chance which looked to be a good chance at the time to cinch the improvement and put upon a sound basis over 90% of its outstanding indebtedness and the parties with whom we had the past contracts said, "Okay. Go ahead for the benefit of everybody and for the preservation of the city," and we went ahead and we made the improvement in the condition of the city right then by making those exchanges. We went ahead as we have stated with that portion of the plan set up in the plan that the city was to realize on these assets and begin to get real help in working out its financial situation, and until 83 (j) was enacted we could not go back into bankruptcy. That is true. We were struggling along. That is right. We were up against a position of 94% plus refunding and five percent plus outstanding bonds that were accruing, and we went on struggling and now we struck a legal enforcement under those securities and we went along all right and we were still hoping to avoid bankruptcy and we had always hoped to avoid the necessity of bankruptcy until we were caught with a writ of mandamus on or before the interest payment was due, on or about the day it was due, about January 1, under the January 1, 1937 bonds and that writ impounded all the funds, all the moneys in that fund, to pay the holders of the coupons of old bonds. The American National Bank—of course it may just have been an accident that they happened to start that lawsuit and we had

to pay out all the money to keep the refunding securities in good standing, but as I remarked, it may just have been an accident.

The Court:

It may have been by accident and it may have been by accident that you did not have any money.

Mr. Adams:

We didn't. That emphasizes the approach to the situation where the city could not carry on.

We contend that these were not preferences under the law of bankruptcy. Mr. Haycock has some further authorities on that, that they weren't preferences, that they weren't unfair or discriminatory treatment of some creditors as compared to other creditors, and as to the exhibits that they referred to, and the excess of payment that they refer to, your Honor will find, in looking at those exhibits, that the exhibits hold to the question of market value of securities and not what will be realized on the securities if they are held and the collections made from the city which they are entitled to.

Now, just one last point before I close to Mr. Haycock and that is the question of the jurisdiction of the Court in considering the bankruptcy petition and in considering these alleged unfair acts during the operation. We grant that they may be considered as bad faith, but when considering it as bad faith, the net result of those acts must be looked to. Those acts, in considering whether they are bad faith or not, can be looked to. In the Merced case on the question of good faith or bad faith of a bankrupt, they did the same thing with $300,000.00, money that belonged to the bondholders, but the net result of that to everybody was a benefit and it was a benefit to the dissenting creditors as well as those who had accepted the plan. So we contend, in looking at these operations to determine wheth-

er or not the city has demonstrated either bad faith or good faith, that the Court should look to the net result and that the net result today is an improvement in the financial condition of the city that is a benefit to the dissenting creditors as well as to the other creditors from now on out.

Now, in the Getz v. Edinburgh Consolidated Independent School District case where there were a number of imperfections in the operations of the city in the past, including the payment of interest to some bondholders and no payment to the others, I think this quotation is pertinent:

"Petitioner has ample authority to carry out the plan. If it wilfully does not do so in a fair and equitable manner the right to bring suit will be available to any bondholder to compel compliance."

We have here an opinion of the Fifth Circuit Court on the question of the jurisdiction and extent of jurisdiction of the Court in a municipal bankruptcy case. It is the case of Leco Properties, Inc., et al. v. R. E. Crummer & Company, et al., 10201, a clerk's certified opinion under date of May 5, 1942. In it the Court said:

"This is, that a municipal composition proceeding, while maintainable under the bankruptcy powers, is a proceeding for voluntary settlement of its indebtedness and not a proceeding to adjudge the city a bankrupt, and though the jurisdiction of the Court over the municipality and its debt service funds for the purpose of effectuating the composition is exclusive and complete; Poinsett Lbr. Co. v. Drainage District, 119 F. (2d) 270; Kelly v. Lassiter, Fla. March 20, 1942, that jurisdiction does not, it cannot extend to adjudging the city bankrupt or to administering its af-

fairs as in bankruptcy. It is strictly limited to disapproving or approving and carrying out a proposed composition."

And then, as they decided in the Edinburgh case, if the city does not carry out the composition, creditors are entitled to go into Court, a Court of proper jurisdiction to enforce it.

On August 19, 1942 Order was filed in words and figures as follows, to-wit:

1901 ORDER.

(Title Omitted.)

The financial situation of the debtor, as of January 1, 1937, is set forth in Ordinance 269, and in the Plan and Agreement for the Readjustment and Refunding, dated December 24, 1936, and need not be dwelt upon in this order. The financial difficulties of the City were such that it called in the services of expert advisers, and on October 1, 1936, a resolution was passed appointing Carl L. V. Exselsen as exclusive representative of the City to negotiate a debt refunding plan in conjunction with the Mayor and City Commissioners. The proposed adjustment was the subject matter of Ordinance 269, passed December 23, 1936. This plan provided for the creation of several Funds: (a) Debt Service Taxes specified by Section 8 are to be levied during the life of the refunding issue 1937-1977. The proceeds are appropriated into an "Issue of January 1, 1937 Fund." Interest on the Refunded Bonds was first to be paid out of this "Issue of January 1, 1937 Fund," and any excess is to be paid into a (b) "Sinking

Fund" for the Refunding Bonds with Section 9 provisions that so much of excess moneys from "Issue of January 1, 1937 Fund" will be paid into this Fund, so that definite amounts are each year paid. (c) An "Emergency Sinking Fund" was also established, occasioned by provisions for repayment of collections from delinquent taxes into a Fund from which a borrowing had been made. (d) Debt Service Collections not used for interest on the Refunding bonds, and not needed for the Refunding Bonds Sinking Fund requirements under Section 9, are to be passed to a "Tax Participation Certificate Fund," which by the Plan is established for the use and benefit of the Tax Participation Certificates. (e) By Section 12 a $500,000.00 Fund was provided, to be realized by sale of delinquent tax assets prior to January 1, 1936, and usable by the City as provided for therein. The Plan is unique in its provisions for the purchase by the City of its own Refunding Bonds, thus tending to establish a market and salability of its obligations.

The principal of the indebtedness, not to exceed a set amount, was to be refunded at fifty cents on the dollar, and unpaid interest to January 1, 1937, together with the unrefunded 50% of the principal, was to be refunded by the issuance of Tax Participation Certificates, the latter not being a debt of the City, but expressive merely of a right to participate in certain funds.

The Master has filed a well-considered and splendidly prepared report. It appears that the Plan is fair and equitable, and otherwise meets the requirements of the statute. The Master has considered and made findings as to the solvency of the City and its ability to meet its debts. And it further appears that the Plan has been consented to by more than the requisite number sufficient to justify its being made binding upon objecting creditors.

On February 3, 1937, the City entered into an agreement with a Bondholders Protective Committee. This agree-

ment was executory in its nature. The contract did not constitute a giving up or departure from the plan of settlement. On June 30, 1937, the City entered into an agreement with Mr. Exselsen looking toward acceptance of its plan by creditors. Among the provisions of this contract was one looking toward Exselsen making special settlements with creditors, subject to the City's subsequent approval and confirmation. The City was in dire financial distress at that time, as shown by the record, litigation was pressing, and the contracting for the services of an expert adviser and planner, with incidental provisions for contemplated special settlements, did not constitute a departure from the plan of settlement, set out in Ordinance 269. By decree of the Supreme Court of the State of Florida (July 30, 1937) the validation of the refunding bonds was approved and confirmed. Thereafter, on September 4, 1937, an amending Ordinance was passed with regard to homestead provisions, the same being necessitated by the decision of the Supreme Court upholding the decree of the Circuit Court validating the said refunding bonds. Thereafter, September 24, 1937, settlement was made with the Bondholders Protective Committee known as the "Barker Committee," and a formal exchange of a large number of the old bonds was effected.

I have examined the record and find that the Plan of Readjustment proposed by Ordinance 269 was followed by the City in dealing with its creditors both before August 16, 1937, and thereafter.

The second Municipal Bankruptcy Act became effective August 16, 1937, and I have concluded that the City by commencing its refunding settlements in September, 1937, and continuing thereafter, did not sacrifice its rights to thereafter proceed under the Municipal Bankruptcy Act, with the right thereafter to assert consents of creditors under Subsection "J" added to the Act June 22, 1938. I find that there was no inconsistency in the position taken

by the City. At this time under the law as was then adjudicated by the decision of the District Court in the West Palm Beach case, later affirmed by the Circuit Court of Appeals for the Fifth Circuit, 96 F. (2) 85, the holders of refunded obligations could no longer be counted as creditors favoring the plan as a bankruptcy composition, but the City was not precluded from proceeding with its plan of readjustment and seeking to readjust with as many of its creditors as it could, and with the passage of Subsection "J", effective September 22, 1938, the right of the City in asserting consents was greatly enlarged. The record discloses that the City very consistently proceeded with an attempt to settle with all of its creditors. The City has throughout maintained its position of offering a definite plan of settlement, and its settlements with various creditors have been consistent with that plan of settlement to the extent that it is justified in submitting this plan of settlement to the Bankruptcy Court, after the passage of Subsection "J", as the plan of composition, with its prayer that such plan be made binding on all its unsecured bond creditors.

On October 11, 1937, the City entered into a contract with the Coral Gables Development Company, a Florida corporation, under the terms of which the City agreed to sell a large portion of the City's delinquent tax assets, covering and representing delinquent taxes imposed prior to January 1, 1936, and other assets owned by the City. I have very carefully examined the record to determine whether there was by reason of the sale of these assets a departure from the plan of reorganization, and I find that there was no such departure, and that the execution of that contract did not affect the City's position as a Municipal debtor in continued efforts to settle its indebtedness with creditors according to the plan of adjustment definitely proposed, and which up to that time had been partially accepted. The assets sold by the City by this agreement of

October 11, 1937, are described in Section 12 of Ordinance 269. It is noted in this Section 12, which is a part of the proposed plan, there was a waiver and relinquishment by the creditors of all right to participate in the assets sold by this October 11, 1937, agreement. It appears from the record that on December 23, 1936, the date of passage of Ordinance 269, there was under discussion the proposed sale of this character of assets to a corporation known as the "XYZ Corporation," a proposed plan of disposition which never materialized. The sale, however, of a portion of the assets to Coral Gables Development Company in the following October is not a departure from the plan. The assets sold were to be excepted from the plan, and could be dealt with as free assets. I find, therefore, that the City did not forfeit its right to thereafter seek the benefits of the Municipal Bankruptcy Act by reason of the sale of these assets. Neither did the City forfeit its rights in its handling of the proceeds derived from such sale. A large fee out of such assets was paid by the City to Mr. Exselsen, which was the subject matter of a great deal of publicized comment, but I find from the record that the City's use of the proceeds of this sale was in a good faith effort to carry out the plan, and in an effort to most advantageously deal with the creditors of the City who had not agreed to accept refunding bonds.

During the fall of 1937, and from time to time thereafter, various creditors of the City were dealt with and settlements were made with some creditors, and some of these creditors received larger percentages of realization on their debts than other creditors who had accepted refunding bonds. But in all of the settlements, which were completed with cash payments, the record shows there was a good faith effort on the part of the City, and there was never a departure from the effort of the City to effect the proposed refunding settlement with all of its creditors. These special settlements can well be justified as consistent with the plan, (1) by reason of the pressing circum-

stances of litigation, and (2) the use of so-called free funds in the effecting of settlements. Also it is worthy of comment that the sanction of holders of refunding bonds was obtained, an unnecessary precaution unless the City was keeping in effect at all time the plan for settlement with all, either as a plan of settlement or with Subsection "J" later enacted as a plan of composition. The arrangement made with certain of these creditors has developed into what is known in this record as "Special Issues." I have studied the record with regard to these special issues. The test to be applied, I hold, is whether the City relinquished its position as a debtor to make a settlement with all the creditors. Unequal amounts paid to some creditors resulted from pressure of litigation, and other justifiable causes, constituting not an inequality in the plan, but in an attempt to secure 100% acceptance, during all of which time the City had not departed from or given up its adopted plan of settlement. These creditors are to have their rights considered and determined in the light of the Municipal Bankruptcy Law, and settlement made with one creditor, changing the rate of interest and changing the terms of payment, is not a final settlement which precludes the debtor from asserting its rights under the Municipal Bankruptcy Act as against all creditors who have not agreed to the proposed plan of readjustment if the City does not succeed in effecting a settlement with all of its creditors. This record shows that the City was continuously dealing with its creditors, some of whom were pressing for mandatory writs, and these creditors who entered into a different and new arrangement with the City in regard to their debts must be held to have entered into such arrangement in the light of Municipal Bankruptcy Law. As long as the City was endeavoring to settle with all of its creditors, and had not departed from its position as a debtor attempting to settle with all, just so long must it be said that the creditors made their new arrangements in the light of this right in the debtor. These

creditors are not entitled to segregate themselves as being in a different class from those creditors who first accepted the proposed plan of reorganization. The partial acceptance or acceptances did not affect the City's rights to continue to seek settlement with other creditors. The very agreement of October 11, 1937, evidences this intention, specifically making mention of the continued efforts of the City to compose with its creditors according to the plan of reorganization under consideration.

I have carefully examined the record and the Master's report with regard to the claim of American National Bank and other creditors who claim that they were unfairly treated by this plan because they owned interest coupons alone. I agree with the Master that the burden was upon these creditors to show some special equity in themselves, which they failed to do. The acquisition of these interest coupons by these creditors is carefully treated in the Master's report, and I think correctly so. Laying aside for the moment the question of these holders as being holders of negotiable instruments in due course, I agree with the Master's holding. The treatment of interest differently from the principal is under the record fair and complies with statutory essentials. On the question of these holders of coupons being holders of negotiable instruments, in my study of the case after its submission, I have asked myself the question, "Are these interest coupons negotiable instruments?" The dearth of Florida decisions on the subject is the cause of comment in Burns Mortgage Co. v. Fried, 292 U. S. 487. In pursuing the thought I looked up the record of one of the ended cases in this Court, where judgment has been entered on Coral Gables interest coupons, the case being No. 2466-M. I found the principal obligation was signed, but the interest coupon was printed. I doubt very much if under 6761 Complied General Laws of Florida (1927), the coupon is a negotiable instrument. The point was not presented, as

I recall, in argument, and I merely mention it here as an added reason for upholding the Master's report.

A very painstaking member of this Bar was appointed as Special Master in this case, and the report of testimony, his rulings, and his report indicate a very careful consideration of a very lengthy case. He has with great detail dealt with the various contentions of the parties, and I think his conclusions are correct in regard to the law and facts, and his report will be affirmed.

Proper orders may be submitted in accordance with the affirmance of the Master's report.

Done at Miami, Florida, this 19th day of August, 1942.

JOHN W. HOLLAND,
United States District Judge.

1908 On August 27, 1942, Motion of Petitioner to vacate portion of temporary injunction and stay order was filed in words and figures as follows, to-wit:

MOTION TO VACATE PORTION OF TEMPORARY INJUNCTION AND STAY ORDER.

(Title Omitted.)

Comes now the Petitioner, The City of Coral Gables, Florida, by its undersigned Counsel, and moves the Court for an Order vacating that portion of the Temporary Injunction and Stay Order filed herein on August 3d, 1940, which requires the Petitioner to continue to make the special ear-marked tax levies required under the existing Peremptory Writs of Mandamus in the several causes listed and described in said order, and to vacate the por-

tion of the Stay Order requiring the Petitioner to hold the proceeds of said special spread tax levies and restraining the Petitioner from disbursing the same.

This the 22d day of August, A. D. 1942.

MORTON B. ADAMS,
(Morton B. Adams)
Of Counsel for Petitioner,
The City of Coral Gables.

On August 27, 1942 Order modifying stay order was filed in words and figures as follows, to-wit:

1909 ORDER MODIFYING STAY ORDER.

(Title Omitted.)

This cause came on to be further heard upon the motion of the Petitioner for a modification of the Temporary Injunction and Stay Order, filed August 3, 1940 and recorded in Minute Book 21, at page 101, after due notice to the interested parties, and the Court being fully advised in the premises,

It Is Considered, Ordered And Adjudged that the portion of the said Temporary Injunction and Stay Order which requires the Petitioner City to continue to make the special earmarked tax levies required under the existing peremptory writs of mandamus in the several causes listed and described in said Order, be and the same is, hereby, vacated and set aside, and the rest of the said motion be and the same is, hereby, denied; and

It Is Further Ordered And Adjudged that the Petitioner City shall, for the fiscal year 1942-43, levy the debt service taxes provided for in the Plan of Composition, and that this order is made and entered without prejudice to the rights of the interested parties and subject to the further orders of this Court.

Done And Ordered at Miami, Dade County, Florida, this the 27th day of August, A. D. 1942.

JOHN W. HOLLAND,
United States District Judge.

On October 27, 1942 Stipulation was filed in words and figures as follows, to-wit:

1910 STIPULATION.

(Title Omitted.)

It Is Stipulated And Agreed that the attached photostatic copy of The City of Coral Gables General Improvement Bond, Issue of January 1, 1927, No. 875, and coupon attached thereto, is one of the bonds and coupons on file in the office of the Clerk of the United States District Court in suit by Lois Harmon, Plaintiff, vs. City of Coral Gables, Defendant, No. 2466-M-Civil, and one of the bonds and coupons upon which judgment was premised in said cause; that the form of said bond and coupon is substantially the same form as that used in all of the other issues of bonds and coupons affected by the Plan of Composition in this cause, and that the last paragraph of the said bond, reading: "In Witness Whereof, said City of Coral Gables has caused this bond to be signed by its Mayor, attested by its City Clerk, and its Corporate Seal to be hereunto affixed and the interest coupons hereto attached to bear the

facsimile signatures of said mayor and said city clerk, all as of the first day of January, 1937,", is substantially the form of phrase used in each of said bond issues; and that in each of said bond issues coupons in substantially the form shown on the attached photostatic copy were lithographed or printed and attached to the bonds, and while so attached the Mayor and City Clerk of said City signed and sealed said bonds, which were thereafter issued;

It Is Further Stipulated And Agreed that all of said bonds and coupons were issued pursuant to ordinances of The City of Coral Gables, Florida, in substantially the same forms and which contained among other things a provision substantially as follows: "The Refunding Bonds herein authorized to be issued shall be signed by the Mayor, attested by the City Clerk and the corporate seal of The City of Coral Gables shall be affixed thereto. The interest coupons thereto attached shall be executed with the facsimile signatures of said Mayor and said City Clerk." Prior to 1929 the forms and authorization provided for the facsimile signature of only the City Clerk.

Dated this the 14th day of October, A. D. 1942.

WYLIE & WARREN,
BASS, BERRY & SIMS,
Attorneys for American National Bank of Nashville, Tennessee.
By F. A. BERRY,
Of Counsel.
D. H. REDFEARN,
IRA C. HAYCOCK,
MORTON B. ADAMS,
Attorneys for Petitioner.
By MORTON B. ADAMS,
Of Counsel.

1914 On January 19, 1943 copy of Petitioner's proposed interlocutory decree confirming Plan of Composition, was filed in words and figures as follows, to-wit:

INTERLOCUTORY DECREE CONFIRMING PLAN OF COMPOSITION.

(Copy of Petitioner's Proposed.)

(Title Omitted.)

This cause came on for hearing, after due notice, upon the Special Master's Report filed herein on May 8, 1942, and the objections and exceptions filed thereto, and the Court having heard the arguments of attorneys for the respective parties and having considered the Master's Report and the entire record in the cause, and having entered an Order dated August 19, 1942, filed August 19, 1942 and recorded in Minute Book 24, at page 83, and in said order having approved, confirmed and adopted the when the plan of settlement was placed in effect by the Special Master and as supplemented by those of the Court as and for the findings and conclusions of the Court, it is therefore,

Ordered, Adjudged And Decreed by the Court, as follows:

1. That, as of June 27, 1940, being the date the Petition was filed in this cause, and as of September 1937, the date when the plan of settlement was placed in efect by the Petitioner, the Petitioner was insolvent and unable to meet its debts as they matured.

2. That the holders of all claims based on the obligations of The City of Coral Gables, set out in the Plan of Composition, and which have been admitted by the Petitioner or allowed by the Judge, are hereby classified as creditors of the same class; and the Court finds that there is but one class of creditors, namely, those having claims payable without preference from the proceeds of ad valorem debt service taxes levied pursuant to the Charter authority of the said City and that there are no claimants having either specific property or revenues pledged for the payment of said claims.

3. That having carefully examined all the contracts, proposals, acceptances, deposit agreements, and all other papers relating to the plan, for the specific purpose, the Court finds that no fiscal agent, attorney or other person, firm or corporation promoting the composition or doing anything of such a nature has been or is to be compensated directly or indirectly by both the Petitioner and the creditors of the Petition or any of such creditors, either by fee, commission or similar payment, or by transfer or exchange of bonds or other evidence of indebtedness whereby a profit could accrue.

4. That the Plan of Composition (a) is fair, equitable and for the best interests of the creditors and does not discriminate unfairly in favor of any creditor or class of creditors; (b) complies with the provisions of Chapter IX of the Federal Bankruptcy Law as amended; (c) has been accepted and approved as required by subsection d, of Section 403, of said Chapter IX; (d) that all amounts paid and to be paid by the Petitioner for services and expenses incident to the Plan of Composition have been fully disclosed and are reasonable; (e) that the offer of said Plan of Composition and the acceptances of the same are in good faith; and (f) that the Petitioner is authorized by

law to take all necessary action to be taken by it to carry out the said Plan of Composition.

5. That said Plan of Composition be and the same is, hereby, approved and confirmed, and that all objections thereto and all answers and motions to dismiss filed in objection to said Plan or to the validity of this proceeding or the constitutionality of Chapter IX of the Bankruptcy Act, be and the same are, hereby, overruled and dismissed; and the objections and exceptions to the Special Master's Report and findings of fact and conclusions of law be and the same are, hereby, overruled and denied.

6. That the claimants, Fiduciary Counsel, Inc., C. J. Root, Augustus T. Ashton, Lois Harmon, W. J. Noel and G. E. Vallette, each have a vested right in and to all of the moneys paid to each of them by the Petitioner prior to the filing of the petition in this cause out of the proceeds of special earmarked tax levies made by the Petitioner for the benefit of the said claimants; and that no claimants have rights which have become vested, other than those hereinabove described.

7. That the indebtedness of all claimants holding judgments and peremptory writs of mandamus against the Petitioner shall be refunded as of July 1, 1940; that such claimants shall be entitled to Refunding Bonds of the Issue of January 1, 1937, according to the balance due on their respective claims, with interest coupons falling due subsequent to July 1, 1940 attached; and shall be entitled to Tax Participation Certificates, according to the balance due on their respective claims, and said certificates shall be entitled to participate in liquidation dividends from and after July 1, 1940, and the amounts due for liquidation dividends for the fiscal years 1940-41 and 1941-42 shall be paid in cash by the Petitioner at the time of the de-

livery of the said certificates at the same rates that such dividends were paid to holders of outstanding certificates in said years.

8. That in calculating the balance due on the judgment and on the obligations included in the agreement in favor of claimant C. J. Root, interest on the balances due on the judgment shall be figured at the rate of five (5%) per centum per annum and interest on the balances due on the indebtedness covered only by the agreement shall be figured at the rate shown in the face of the bonds included in the agreement and not at the modified rate of interest agreed to between the parties.

9. That in calculating the balance due on the judgment in favor of claimant Fiduciary Council, Inc. interest on the balances due on the judgment shall be figured at the rate of five (5%) per centum per annum and not at the modified rate of interest agreed to between the parties.

10. That that portion of the Temporary Injunction and Stay Order dated July 26, 1940 and filed herein on August 3, 1940, which required the Petitioner City to continue to make the special earmarked tax levies under the existing peremptory writs of mandamus in the several cases listed and described in said Order, be and the same is, hereby, vacated and set aside; and that portion of the aforesaid Stay Order requiring the Petitioner City to hold the proceeds from said special spread tax levies and the proceeds of delinquent special tax levies made pursuant to the said peremptory writs of mandamus, and restraining the Petitioner from disbursing the same, be and the same is, hereby vacated and set aside.

11. That within .... days after the entry of this Interlocutory Decree, the Petitioner City shall cause to be pub-

lished in The Miami Herald and the Miami Daily News, newspapers published in Miami, Florida, and The Bond Buyer, a paper published in the City of New York, State of New York, having general circulation among bond dealers and bond owners, once a week in each of said three papers, for two consecutive weeks, a Notice to the holders of outstanding unrefunded bonds and coupons of the Petitioner and of judgments against the Petitioner affected by the Plan of Composition, that the Plan of Composition has been confirmed by this Court and that the original unrefunded bonds and coupons and satisfaction of judgments against the Petitioner affected by the said Plan must be produced to the City for exchange in accordance with the terms of the Plan of Composition.

12. That the Petitioner City shall forthwith, upon the presentation of its original unrefunded bonds and coupons and upon the presentation of satisfactions of judgments affected by the Plan of Composition, exchange such evidences of indebtedness affected by the Plan of Composition with such claimants for the Refunding Bonds and Tax Participation Certificates to which the several claimants shall be entitled under the Plan of Composition, and the Petitioner City at the time of such exchanges shall pay to such claimants in cash all sums past due and owing to them in accordance with the obligations of the Refunding Bonds and Tax Participation Certificates delivered in exchange for such unrefunded obligations, and on or before sixty (60) days from the date of this decree the Petitioner City shall report to the Court in detail the progress of such refunding of its unrefunded obligations affected by the Plan of Composition.

13. That the Petitioner City, beginning with the fiscal year 1942-43, shall do and perform and carry out all of its obligations and duties under the said Plan of Composi-

tion as if the same had been actually consummated and completed as to all of the City's indebtedness affected by the said Plan.

14. That any and all holders of the outstanding unrefunded indebtedness of the Petitioner City, affected by the Plan of Composition, be and they are hereby enjoined, pending the entry of final decree herein, from attempting the enforcement or collection of any claim, judgment or lien by legal proceedings or otherwise which they may have against the Petitioner or against any of the lands situate within the Petitioner district and owned by individuals.

15. That this Court, hereby, expressly retains jurisdiction herein to supervise the consummation of said Plan of Composition and for the purpose of entering a final decree herein and such additional orders as may be necessary to make said Plan of Composition fully effective when consummated.

Done And Ordered at Miami, Dade County, Florida, this .... day of October, A. D. 1942.

.....

United States District Judge.

On November 20, 1942 Motion for Additional and Amended Findings of Fact and Conclusions of Law were filed by Ed. C. Wright & Company, in words and figures as follows, to-wit:

MOTION FOR ADDITIONAL AND AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1920 (Title Omitted.)

Ed. C. Wright, a creditor of Petitioner, moves the Court for an Order making Additional and Amended Findings of Fact and Conclusions of Law, in the following particulars:

1. By striking the first sentence in the first paragraph on page 5 of the Order entered herein August 19, 1942, and substituting in lieu thereof the following:

"From October 18, 1937, to and including December 15, 1938, the Petitioner effected not less than 29 settlements with creditors who were not willing to accept the general terms offered by the Petitioner in Ordinance 269 (as amended by Ordinance 289). The majority of these settlements were negotiated and consummated by Mr. Excelsen, pursuant to the terms of his aforementioned contract with Petitioner. Each and every creditor participating in such special settlements received larger percentages of realization of their debt than other creditors who had agreed to accept the general terms offered by said Ordinance 269. Involved in these settlements were total unrefunded claims against Petitioner (consisting of bonds, coupons, and judgments, and in some instances coupons only) in the amount of $598,448.17. The Petitioner paid in cash to said creditors receiving the special settlements the sum of $263,961.34, plus an additional consideration of $13,000.00 par value of refunding bonds of the issue of January 1, 1937, to one such creditor."

2. By including, as an additional finding of fact, the following:

"Subsequent to September of 1937, Petitioner City purchased admitted unrefunded claims against itself in excess of $500,000, a majority of which were past due. These claims were not canceled but Petitioner exchanged them with itself, and issued to itself Refunding Bonds in excess of $300,000 and Tax Participation Certificates in excess of $400,000, which were carried as an asset of Petitioner. The City also purchased, on the open market, approximately $200,000 of its Refunding Bonds, which it did not immediately cancel and which were carried as an asset. Of the Refunding Bonds so acquired, approximately $50,000 principal amount were canceled each year.

The City has each year received payments on these securities in the same way as other holders of like securities."

Respectfully submitted,
S. O. CARSON,
MILLER WALTON,
CASEY, WALTON & SPAIN,
Attorneys for Ed. C. Wright.
By MILLER WALTON,
Of Counsel.

1923 On November 20, 1942 Motion of American National Bank of Nashville for additional and amended findings of fact and conclusions of law were filed in words and figures as follows:

MOTION FOR ADDITIONAL AND AMENDED FINDING OF FACT AND CONCLUSIONS OF LAW.

(Title Omitted.)

Comes the American National Bank of Nashville, an objecting creditor in this cause, and moves the Court to amend its Finding of Fact and Conclusions of Law, embraced in an Order dated August 19, 1942, and filed August 19, 1942, and recorded in Minute Book 24 at page 83, in the following particulars, to wit:

On page 6, the Court recites that he has carefully examined the record and Master's Report, with regard to the claim of American National Bank and other creditors who claim that they were unfairly treated by this Plan, because they owned interest coupons alone. The Court states that there was a burden upon these creditors to show some special equity in themselves, which they failed to do. The Court continues:

"Laying aside for the moment the question of these holders as being holders of negotiable instruments in due course, I agree with the Master's holding. The treatment of interest differently from the principal is under the record fair and complies with statutory essentials. On the question of these holders of coupons being holders of negotiable instruments, in my study of the case after its submission, I have asked myself the question, 'Are these interest coupons negotiable instruments?' The dearth of

Florida decisions on the subject is the cause of comment in Burns Mortgage Co. v. Fried, 292 U. S. 487 * * * I doubt very much if under 6761 Compiled General Laws of Florida (1927), the coupon is a negotiable instrument. The point was not presented, as I recall, in argument, and I merely mention it here as an added reason for upholding the Master's report."

The record discloses without contradiction that the coupons claimed by the American National Bank were delivered to it on three dates, August 22, 1938, August 22, 1938, August 30, 1938 and September 12, 1938. At that time, approximately one-third of the coupons had matured. Approximately one-third matured between that date and the filing of the Petition, and coupons to the amount of $16,822.50 matured after the Petition was filed. The said bonds and coupons were delivered to the Bank as security for an indebtedness, and its claim has been allowed. Thereafter and shortly before the Petition was filed, a portion of the security, being the bonds, was returned to Ed. C. Wright and coupons were retained. The Master found "that the Bank from time to time prior to June 12, 1940, held as pledgee, bonds in a large amount which were owned by Ed. C. Wright, that on June 12, 1940, a few days before the Petition was filed in this cause, bonds to the amount of $225,000 were by the Bank returned to Wright, and that in that time all coupons maturing prior to June 15, 1940 were detached and retained by the Bank as collateral security. It thus appears that before the time of that transaction the coupons accepted and retained by the Bank as pledgee were accepted after maturity." No coupons were accepted in June, 1940. The use of this word is evidently an error by the Master and was duly excepted to in exceptions now overruled, and for that reason the Court's attention is again brought to the matter. The coupons were received and accepted at

the time they were pledged in 1938. From that time forward, they were never surrendered, but on the contrary, held by the Bank with the claim against the City being constantly pressed.

The rights of a pledgee are the same as a purchaser.

The holding of the Court now is that a coupon is not a negotiable instrument, and therefore, it is proper to pay coupons in a different way and less than the payments of indebtedness evidenced by bonds. The Court states the question has not been decided in Florida, and cites Burns Mortgage Co. v. Fried, 292 U. S. 487, as commenting on the dearth of Florida decisions. It may be that counsel did not present this point fully at the hearing because the question has been expressly and repeatedly decided by the Supreme Court of Florida, and such decision is, of course, binding on this Court.

The case of Burns Mortgage Co. v. Fried does not discuss whether or not a coupon detached from a bond becomes a negotiable instrument, but discusses the question of whether or not interest can be compounded and states there are no Florida decisions on this. The Court did say, however, that if the State Supreme Court of Florida had not spoken, it was the duty of the Federal Court to decide the question, giving weight to authority in other States. The weight of authority, as we will show, is in favor of holding coupons to be negotiable instruments, and the decisions in Florida so hold.

The first decision we have found on the matter is County Commissioners Columbia County v. King, 13 Fla. 451. In speaking of coupons the Court says, on page 467:

"The coupons are drawn so that they can be separated from the bonds, and like the bonds, are negotiable, and

the owner of them can sue without the production of the bonds to which they were attached or without being interested in them."

The foregoing is quoted from the Supreme Court of the United States in Thompson v. Lee, 3 Wallace 327. The Court also quotes from Mercer County v. Hackett, 1 Wallace 83, and says the Court holds "that these securities are treated as negotiable by the commercial usages of the whole civilized world, and have received the sanctions of judicial recognition, not only in this Court, but of nearly every State in the Union, is well known and admitted." The Florida Court, however, on page 480, held that the right of a County to pay interest was statutory, and that the entire contract to pay interest was in the bond and nowhere else, and the bond agreeing only to pay interest on the principal amount, that interest could not be allowed on the coupons. This case was decided in 1870.

The Florida Court again considered the matter in 1887 in the case of Jefferson County v. Hawkins Trustee, 2 So. Rep. 362, 23 Fla. 223. This case holds expressly that coupons do bear interest, but at the legal rate and not at the contract rate, and on page 365, states this:

"Although it has been intimated by this Court in 13 Fla. that coupons past due do not bear interest, we are clearly of the opinion that the weight of authority is, as it is now held in the United States Court and most of the State Courts that coupons do bear interest after maturity."

The matter was again discussed in 1903 in the case of National Bank of Jacksonville v. Duval County, 34 So. 894, 45 Fla. 476, and the Court refers to the case of Jefferson County v. Hawkins, supra, stating "It will be observed that in that case, the coupon was a negotiable in-

strument in the nature of an independent claim issued under a statute authorizing the County to issue the bond with interest coupons."

The question was more fully considered in 1894 in the case of Trustees of Internal Improvement Fund v. Lewis, 16 So. 325, also reported in 34 Fla. 424, 43 American State Reporter 209, and 26 L. R. A. 743. In this case, the Florida Railroad Company issued its bonds with coupons attached. The coupons were detached before maturity and negotiated to innocent holders. Thereafter, the Railroad Company paid and redeemed the bonds without the coupons and defended on the ground that the coupons were not separate negotiable instruments, and that the discharge of the principal debt discharged the coupons, especially those which matured after the principal debt matured. The Court says, on page 326:

"The coupons sued upon are payable to bearer, and according to well settled law, are in legal effect, promissory notes and possess all the attributes of negotiable paper. 4 Am. & Eng. Enc. Law, page 432, and citations. They are transferrable by delivery although detached from the bonds; and it has been held that a purchaser in good faith before maturity from one even who has stolen them, acquires a good title. Evertson v. Bank, 66 N. Y. 14, Arents v. Com., 18 Grat. 750, Spooner v. Holmes, 102 Mass. 503, Murray v. Lardnar, 2 Wall. 110, Hutsky v. Bank, 21 Wall 354. It is further well settled that such coupons may be detached and negotiated separately by simple delivery and sued on separately from the bond after the bond itself has been paid and satisfied, as well as before; and that coupons once detached and negotiated cease to be more incidents of the bond and become independent claims and that they carry interest after maturity * * *

"As before shown, these coupons when detached from the bonds before their maturity became independent claims, and were no longer mere incidents of the bond, and became the ones possessed of all the attributes of negotiable merchantile paper;"

This last case is reported in volume 43, Am. St. Reps., together with other authorities to support the proposition that corporate bonds with coupons payable to bearer are negotiable and that coupons may be detached and negotiated separately by simple delivery. The cases hold that when so negotiated the coupons have equal dignity with the bonds. To the same effect, see American National Bank v. American Wood Paper Company, 43 Am. St. Reps. 746. The last mentioned Florida case is here cited in a note as authority for the principal case.

The last mentioned Florida case is also reported in 26 L. R. A., page 743, and refers to a long note also supporting the same proportion attached to Bailey v. County of Buchanan (N. Y.) 6 L. R. A. 562.

In a note in 27 A. L. R., page 89, there is a long note collecting cases in a large number of States and citing the three Florida cases mentioned above. There do not seem to be any contrary cases.

For the reasons stated, especially as to those coupons which were received by Petitioner prior to their maturity for value and which were continuously retained and are still being retained, it is respectfully asked that the finding of fact be modified, holding that as to these coupons, the Bank stands on at least the same basis as bondholders and is entitled to be paid in the same proportion. Insofar as the conclusion of law holds that coupons are not

negotiable instruments, Petitioner respectfully asks, in view of the cases cited, that this finding be corrected.

Respectfully submitted,
THE AMERICAN NATIONAL BANK OF NASHVILLE,
By F. A. BERRY,
Atty for Am. Nat'l Bank.
WYLIE & WARREN,
By F. A. BERRY,
Of Counsel.

On November 20, 1942 Motion of American National Bank of Nashville for additional and amended findings of fact and conclusions of law was filed in words and figures as follows, to-wit:

MOTION FOR ADDITIONAL AND AMENDED FINDING OF FACT AND CONCLUSIONS OF LAW.

1930 (Title Omitted.)

Comes the objecting creditor, American National Bank of Nashville, and respectfully moves the Court for additional and amended findings of fact and conclusions of law, as contained in the Order filed August 19, 1942, as follows:

I.

To strike out the paragraph beginning in the middle of page 6, beginning, "I have carefully examined the record, etc." and ending with the words, "an added reason for up-

holding the Master's report" and substitute in lieu thereof:

"I have carefully examined the record and the Master's report with regard to the claim of the American National Bank and other creditors who claim that they were unfairly treated by this Plan because they owned interest coupons alone.

I find that the coupons held both by the American National Bank and others, are printed coupons with lithographed signatures, which are, under the laws of Florida, negotiable instruments, and I so hold.

I further find in reference to the coupons held by the American National Bank of Nashville that they were pledged with that Bank for advances of money at the time of pledge on three dates: August 22, 1938, August 30, 1938, and September 12, 1938, the coupons were retained by said bank from the dates of the three pledges, but the bonds to which there were attached were surrendered on June 12, 1940. Some of the coupons were pledged originally, separately from bonds. Of the coupons pledged approximately $21,505 were past due when pledged; $20,162.50 matured after pledged and before June 27, 1940; $16,822.50 of coupons matured after June 27, 1940. The master's report is overruled and corrected as to the matters here stated, but is otherwise affirmed."

II.

The objecting creditor Bank further moves the Court to reopen the taking of proof in this cause and to permit the filing of copies of the resolution or resolutions authorizing the issuance of the coupons which are the subject of said Bank's claim and of the bonds to which they were originally attached, and photostatic copies of said bonds

and coupons, unless it can be agreed that all such were in substantially the same forms and then a typical resolution, bond and coupon may be filed.

III.

The objecting creditor Bank moves that all references to the individual and secret investigation of facts by the Court made without notice to counsel for said Bank and without incorporating in the record the sources of the Court's information, be stricken out.

IV.

That there be added to said Order the following:

"A pledgee of a negotiable security received for value and before maturity has the same rights as a purchaser of same. A lithographed facsimile signature affixed to a coupon on a municipal bond, when it is affixed pursuant to lawful authority and duly issued, is a sufficient signature to comply with the requirements of the negotiable instrument law of Florida, Sec. 6761, et seq., Compiled General Laws of Florida. A coupon detached from a bond payable to bearer, when otherwise in the form required by statute, is a negotiable instrument under the laws of Florida."

Dated this 13th day of October, A. D. 1942.

WYLIE & WARREN,
BASS, BERRY & SIMS,
Attorneys for American National Bank of Nashville, Tennessee.
By F. A. BERRY,
Of Counsel.

On November 20, 1942 Motion for Entry of Interlocutory decree pursuant to order of August 19, 1942, was filed in words and figures as follows, to-wit:

MOTION FOR ENTRY OF INTERLOCUTORY DECREE PURSUANT TO ORDER OF AUGUST 19, 1942.

1933 (Title Omitted.)

If an Interlocutory Decree is to be entered herein in accordance with and pursuant to the findings made in the Order rendered herein August 19, 1942, Ed. C. Wright and the American National Bank of Nashville, Tennessee, move the Court to use the proposed form of Interlocutory Decree submitted by the Petitioner, with the following changes:

1. By amending paragraph 1 to read as follows: "That, as of September 22, 1937, being the date when Ordinance 269, as amended by Ordinance 289, was placed in effect by the Petitioner, the Petitioner was insolvent and unable to meet its debts as they matured."

2. By amending paragraph 2 to read as follows: "That the holders of all claims based on obligations of the City of Coral Gables set out in the Plan of Composition, Ordinance 269, as amended by Ordinance 289, and which have been admitted by the Petitioner or allowed by the Judge, constitute and are three separate classes, to-wit: (a) claims on principal amount of bonds outstanding January 1, 1937, and still outstanding; (b) claims for interest (whether or not evidenced by coupons) due January 1, 1937, and still due; (c) claims which were outstanding on January 1, 1937, but which have been fully settled and discharged and which are not affected or intended to be affected by

the Plan and are not affected by this proceeding. Claims (a) above are to receive, as set out in the Plan, 50% of principal in refunding bonds and 50¢ in tax participation certificates. Claims (b) above received only tax participation certificates. Refunding bonds and interest thereon are preferentially paid from the proceeds of ad valorem debt service taxes levied pursuant to the charter authority of the said City for the year 1938 and subsequent years, but not for prior years. Tax participation certificates are paid from the same source but if, and only if, refunding bonds, interest thereon and other payments provided in the Plan of Composition have been paid in full. No claimants have either specific property or revenues pledged for the payment of claims."

3. Omit, at the end of paragraph 3, the following words: "or by transfer or exchange of bonds or other evidence of indebtedness whereby a profit could accrue."

4. Amend paragraph 4 by inserting in the first line after the word "Company" the words "set out in Ordinance 269, amended by Ordinance 289, and placed in effect September 22, 1937."

Add at the end of Section (a), after the word "creditors" the following: "and the special settlements made with various creditors after September 22, 1937, and prior to June 27, 1940, and referred to in the Order entered August 19, 1942, which are not mentioned or provided for in the said Plan of Composition, are not departures therefrom, and do not discriminate unfairly in favor of any creditor or class of creditors or against any other creditor or class of creditors."

Add at the end of paragraph 4 a new sub-section as follows: "(g) that since September 22, 1937, Petitioner has

done all things and performed all acts necessary under said Plan of Composition or required thereby in the performance of same."

5. Enter as written.

6. Amend paragraph 6 by adding at the end thereof the following: "except the former creditors with whom special settlements referred to in the Order of August 19, 1942, were made and completed, whose rights are vested and are now not affected by said Plan nor by this proceeding."

7. Strike out paragraph 7 and in lieu thereof insert the following: "7. That the indebtedness of all creditors holding judgments and peremptory Writs of Mandamus against the Petitioner shall be refunded as of January 1, 1937, in the manner and according to the provisions of the Plan of Composition set out in Ordinance 269, amended by Ordinance 289."

8. Omit this paragraph entirely.

9. Omit this paragraph entirely.

10. Enter as written.

11. Enter as written.

12. Enter as written.

13. Strike out paragraph 13 and insert in lieu thereof the following: "13. That the Petitioner City shall, nunc pro tunc, as of the fiscal year 1937-38, and subsequent fiscal years, do perform, and carry out all of its obligations and duties under the said Plan of Composition as if the said Plan had been actually consummated and completed

as to all of the City's indebtedness affected by said Plan, but expressly excluding claims which have become vested and which are not affected by said Plan or by these proceedings."

14. Add at the end of paragraph 14 the following: "except that this Order shall not be construed to preclude the filing of appeals or Petitions for Certiorari."

15. Add at the end of paragraph 15 the following: "as of September 22, 1937."

Respectfully submitted,
S. O. CARSON,
MILLER WALTON,
CASEY, WALTON & SPAIN,
Attorneys for Ed. C. Wright.
By MILLER WALTON,
Of Counsel.
F. A. BERRY,
BASS, BERRY & SIMS,
WYLIE & WARREN,
Attorneys for American National Bank of Nashville, Tennessee.
By F. A. BERRY,
Of Counsel.

On November 20, 1942 Petitioner's Answers to Motions of Objecting Creditors for additional and amended findings of facts and conclusions of law were filed in words and figures as follows, to-wit:

PETITIONER'S ANSWERS TO MOTIONS OF OBJECTING CREDITORS FOR ADDITIONAL AND AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1937 (Title Omitted.)

Comes now the Petitioner, and for answer to the above mentioned motions, says:

I.

As to Motion for Additional and Amended Findings of Fact and Conclusions of Law by Ed. C. Wright:

By the first paragraph of this motion the claimant seeks to have the Court strike its general finding of ultimate facts and insert in lieu thereof a rather detailed statement, giving only a small portion of the detailed facts relating to the acquisition by the City of outstanding unrefunded claims against it, which were affected by the Plan of Composition.

By the second paragraph of this motion the claimant seeks to have a finding of another small portion of detailed facts connected with the same transactions. The Master made specific findings of the ultimate facts concerning these transactions on pages 4 and 5 of his Report.

In the Court's Order of August 19, 1942, these findings of the Master were approved and adopted and the Court in

its own wording restated its finding of ultimate facts on pages 4 and 5 of its Order.

The details sought by the claimant to be added to the Court's finding are not in conflict with the finding of ultimate facts by the Master and the Court. They are, however, not a complete narration of the detailed facts appearing in the record on the subject matter treated by the Master and the Court in general terms. If the Court is going to add to its findings these partial details proposed by the claimant, then it should go further and add the other details regarding these transactions, all of which are the basis for the Court's general finding of ultimate facts. To do this would require a statement in narrative form of all of the voluminous testimony and exhibits in the record relating to the transactions between the Petitioner and its creditors during the fall of 1937 and from time to time thereafter. We respectfully submit that such a narration of all of these facts would not clarify the record, but merely further encumber the record in this already voluminous case.

The proposed additional and amended findings of fact are really a portion of the factual argument of the claimant as a premise to his contention in this cause that the Petitioner has by voluntary act made such departures from the Plan of Composition that the Plan cannot now be confirmed by this Court in this proceeding.

The Master in his findings of fact and conclusions of law has clearly ruled against the claimant in this contention and the Court in its Order of August 19, 1942 has ratified and affirmed these findings and conclusions of the Master, and also ruled against the claimant on this contention.

Both the Master in his report and the Court in its Order of August 19, 1942 have made very clear and conclusive findings of the ultimate facts concerning the transactions involved in this motion, and the Court's findings should not be amended to include the partial details proposed by Ed. C. Wright in his Motion.

II.

As to Further Motion Concerning Form of Interlocutory Decree by Ed. C. Wright and American National Bank:

This motion deals with paragraphs 6, 7, 8 and 9 of the Interlocutory Decree proposed by the Petitioner. The movants are not concerned with these four paragraphs of the Interlocutory Decree and they are not in position to object to these paragraphs because the same do not adversely affect the interests of the movants in any manner. Before the movants can complain of the form of these paragraphs in the decree it must appear that there is some error in the draft of the paragraphs and that the movants are injured by this error. It does not appear from their motion that these movants can or do suffer any injury, loss or damage, whatever the form of these four paragraphs of the decree might be. They each, upon the consummation of this Plan, will receive exactly the same refunding securities regardless of the provisions of these four paragraphs of the decree. The refunding of the balance due as of July 1, 1940 on the judgment claims will indirectly benefit the movants in that such a refunding reduces the amount of Refunding Bonds and Tax Participation Certificates which will be issued by the Petitioner.

Whether the judgment creditors collect liquidation dividends on their Tax Participation Certificates beginning in August 1938 or beginning in August 1941 does not af-

fect in any way these movants. The liquidation dividends to be paid to the judgment creditors for years prior to the fiscal year 1942-43 will have to be paid out of funds other than the Tax Participation Certificate Fund and other funds provided for in the Plan of Composition. Whether the Court leaves paragraph 7 of the decree as originally drafted by the Petitioner or modifies it as proposed by the Petitioner and claimant Root, will not affect the amount of the liquidation dividends which will be due and payable to these movants on their Tax Participation Certificates when they are issued to them.

These movants are not concerned with paragraphs 8 and 9 as proposed by the Petitioner for the same reason.

The fact that the City upon the payment of $8,000 on the Fiduciary Counsel, Inc. judgment issued $4,000 par value of Refunding Bonds and $4,000 par value of Tax Participation Certificates to itself on the theory that it had purchased $8,000 of the principal amount of bonds involved in the Fiduciary Counsel, Inc. judgment does not alter the amount of refunding securities which the said claimant Fiduciary Counsel, Inc. would be entitled to upon the confirmation of this Plan. That such Refunding Bonds and Tax Participation Certificates were issued to the City does not call for a change in paragraph 9 of the Interlocutory Decree. If the Refunding Bonds and Tax Participation Certificates heretofore issued to the City should not have been issued to the City, then they can be canceled or delivered by the City to Fiduciary Counsel, Inc. The net result will be the same, to wit, that upon effecting the refunding with Fiduciary Counsel, Inc. only the proper authorized amount of Refunding Bonds and Tax Participation Certificates will be issued against the bonds and unpaid interest in the Fiduciary Counsel, Inc. judgment. We

believe it would be better to cancel said Refunding Bonds and Tax Participation Certificates.

Such details as these in carrying out and consummating the Plan of Composition will, of course, remain under the jurisdiction of this Court after the entry of the Interlocutory Decree, and if any party to this proceeding is adversely affected by the manner in which the City and any claimant carries out the interlocutory decree they will have the right to protect themselves by opposing in Court the method of executing the decree. Again we contend that these movants are not injured or damaged in any manner and cannot complain of paragraphs 8 and 9 of the Interlocutory Decree.

The first prayer of the movants should not be granted because it attempts to bring into the record of this cause in connection with the Interlocutory Decree matters and things which will be determined by the Court in the execution of the Interlocutory Decree after it is entered. To grant this prayer will encumber the record with matters which cannot properly be complained of by the movants.

The second prayer of the motion is inappropriate because it seeks to include in the Interlocutory Decree details of execution of the Decree which are not appropriate to come before the Court until there is an Interlocutory Decree, and until there is an issue appropriately presented on the manner of the execution of the Interlocutory Decree and an opportunity for the Court to rule upon the issue so raised over the manner of executing the Interlocutory Decree.

III.

As to Motion for Additional and Amended Finding of Fact and Conclusions of Law by American National Bank:

In order to get before the Court the facts referred to at the end of the Order dated August 19, 1942, relative to the status of interest coupons as negotiable instruments, the Petitioner has investigated the bonds and coupons sued upon in case No. 2466-M and compared them with the form of other bonds and coupons affected by the Plan of Composition. This comparison justified the execution of the Stipulation attached to the photostatic copy of one of the bonds and coupons which was sued upon in the above mentioned cause. This gives to Your Honor the complete factual picture regarding the authorization for the execution of the coupons and the form in which they were issued.

Neither the Master nor the Court in its opinion considered the point of the negotiability of the coupons as controlling in the findings of law in this cause.

Even admitting that the coupons are negotiable instruments, was respectfully submit that the finding of the Master and of the Court would have been the same.

The Petitioner therefore respectfully requests the Court to deny the several motions referred to hereinabove.

MORTON B. ADAMS,
(Morton B. Adams)
IRA C. HAYCOCK,
(Ira C. Haycock)
D. H. REDFEARN,
(D. H. Redfearn)
Attorneys for The City of Coral Gables, Debtor.

On November 20, 1942 Petitioner's answers to motions of American National Bank of Nashville, Ed. C. Wright, C. J. Root, Fiduciary Counsel, Inc. and Augustus T. Ashton relative amendments to interlocutory decree proposed by petitioner were filed in words and figures as follows, to-wit:

PETITIONER'S ANSWERS TO MOTIONS HERETOFORE FILED BY AMERICAN NATIONAL BANK OF NASHVILLE, TENNESSEE, ED. C. WRIGHT, C. J. ROOT, FIDUCIARY COUNSEL, INC., AND AUGUSTUS T. ASHTON RELATIVE TO AMENDMENTS TO THE INTERLOCUTORY DECREE PROPOSED BY THE PETITIONER.

1942 (Title Omitted.)

Comes now the Petitioner, The City of Coral Gables, and in response to the motions of the several creditors above named for changes and amendments to the proposed form of the Interlocutory Decree presented by the Petitioner, says:

1.

In reply to the proposed amendment to paragraph 1 of the proposed interlocutory decree, the attention of the Court is called to sub-section 403 of the Bankruptcy Law, which provides:

"Any petitioner may file a petition hereunder stating that the petitioner is insolvent or unable to meet its debts as they mature and that it desires to effect a plan for the composition of its debts."

The evidence clearly shows that the Petitioner was insolvent on September 22, 1937, the effective date of the refunding, and also on June 27, 1940, the date upon which the petition was filed. A finding of such insolvency by the Court is required and we respectfully submit that this finding should not be limited to the time when the Plan was placed in effect by voluntary agreement with some of the creditors, and that paragraph 1 should be left as submitted by us with the possible amendment of inserting between "September" and "1937" the figures "22".

2.

In response to the proposed amendment to paragraph 2 of the interlocutory decree, we call the Court's attention to Section 403(b), which reads as follows:

"Provided, however, That the holders of all claims, regardless of the manner in which they are evidenced, which are payable without preference out of funds derived from the same source or sources shall be of one class."

The proposed amendment would classify the claims on other than the above basis prescribed by the Act and would be contrary to the findings of the Master, which have been affirmed by the Court, and contrary to the proven facts in the case which show that when classified as required by the Act all claims are of the same class and there is but one class of creditors. This second paragraph should remain as submitted in the Petitioner's draft of the Interlocutory Decree.

3.

The proposed amendment to the 3rd paragraph, by eliminating the last two lines of the draft submitted by the Petitioner, is not an appropriate amendment. The

paragraph submitted by the Petitioner is in substantially the same words as the special findings of the Master in regard to the contracts, proposals, etc. dealt with in the paragraph, and is also substantially the language of the statute requiring such a finding. This third paragraph should remain as submitted in the Petitioner's draft of the Interlocutory Decree.

4.

The proposed amendment to the first line of paragraph 4 of the Interlocutory Decree submitted by the Petitioner is not objectionable, but if the Court is inclined to insert the words suggested, we would recommend that this First line of the 4th paragraph be amended to read as follows:

"That the Plan of Composition set out in Ordinance No. 269, as amended by Ordinance No. 289, and placed in effect by voluntary agreement between the Petitioner and over 90 per cent. of its creditors on September 22, 1937 (a) is fair, equitable,".

The proposed amendment to add additional findings after the word "creditors" at the end of (a) of the 4th paragraph should not be made. The Interlocutory Decree in this sub-paragraph is dealing with the interpretation of the terms and provisions of the Plan of Composition and is not dealing with any of the operations of the Petitioner while the Plan was in operation as a voluntary plan of settlement. The suggested amendment deals with matters totally foreign to this portion of the interlocutory decree and should not be made.

The proposed addition to paragraph 4 of an additional finding to be listed as "(g)" is inappropriate at this point in the decree. The criticisms of paragraph 13 of the Petitioner's draft of the Interlocutory Decree and this proposed

sub-section (g) suggest a redraft of paragraph 13 which we will take up in its proper order.

5.

The objecting creditors suggest no amendments or changes to paragraph 5 of the proposed Interlocutory Decree.

6.

The proposed amendment to paragraph 6 of the Interlocutory Decree should not be made because it is an attempt to adjudicate supposed rights of parties who are not creditors of the City who held no claims against the City at the time of the filing of the Petition in this cause, and who are not parties to this cause. This paragraph 6 should remain as submitted in the Petitioner's draft of the Interlocutory Decree.

7.

A restudy of paragraph 7 of the proposed Interlocutory Decree in the light of the amendments proposed by the American National Bank of Nashville, Ed. C. Wright and C. J. Root suggests to the Petitioner an amendment which we submit should be used in lieu of the suggestions heretofore made by all parties.

Paragraph 7 should read as follows:

"7. That the balance, as of July 1, 1940, of the indebtedness of all creditors holding judgments and peremptory writs of mandamus against the Petitioner shall be refunded as of January 1, 1937 in the manner and according to the provisions of the Plan of Composition set out in

Ordinance No. 269, amended by Ordinance No. 289, except that all coupons on Refunding Bonds falling due on and prior to July 1, 1940 shall be detached and such coupons canceled before exchange with such creditors. Such creditors, however, shall be entitled to receive at the time of refunding in cash out of funds other than those provided for in said Plan of Composition liquidation dividends on Tax Participation Certificates at the rate such dividends were paid to the holders of outstanding certificates in the fiscal years 1937-38 through 1941-42."

This draft is in substantial accord with the second proposal of claimant Root. It differs from the proposal of the Bank and Wright in that it recognizes the fact that the judgment creditors have, prior to July 1, 1940, received payment in full for a part of their claims as of January 1, 1937, and recognizes the fact that they have been paid interest in full on the principal amount of their judgments up to July 1, 1940, and therefore should not be entitled to interest on the Refunding Bonds to be delivered to them from January 1, 1937 to July 1, 1940.

We submit that the above quoted draft of paragraph 7 is in entire accord with the Master's Report and the Court's findings contained in its Order of August 19, 1942.

8.

This paragraph should not be omitted but should be left as submitted in the Petitioner's draft of the Interlocutory Decree.

9.

This paragraph should not be omitted but should be left as submitted in the Petitioner's draft of the Interlocutory Decree.

10.

The Bank and Ed. C. Wright make no objection to paragraph 10, but objection creditors Root, Ashton and Fiduciary Counsel, Inc. propose an amendment to this paragraph providing that these three creditors shall be paid all of the moneys collected, prior to the date of the Interlocutory Decree, from special tax levies made for their and other judgment creditors' benefit. This raises the same question as that presented by the Petition of Root for an order requiring the City to pay to it the proceeds of the special earmarked tax levies collected by the City after the filing of the Petition in Bankruptcy. An interlocutory decree is effective as of the time of the filing of the Petition in the cause, and the sections of the Bankruptcy Act under which this cause is proceeding make no provision for the Court to authorize or require any such special treatment of one creditor in the same class with all the other creditors after the filing of the petition. The amendment proposed by these creditors to this paragraph 10 of the Interlocutory Decree should not be made.

11.

There are no objections to paragraph 11 of the Interluctory Decree proposed by the Petitioner.

12.

There are no objections to paragraph 12 of the Interlocutory Decree proposed by the Petitioner.

13.

Objecting creditors' proposed addition of (g) to paragraph 4 of the Interlocutory Decree and their proposed

amendment to this paragraph 13 of the Interlocutory Decree suggests to the Petitioner a redraft of this paragraph. The amendments proposed by the objecting creditors are not in accordance with the facts as proven in the case, but the following proposed redraft of paragraph 13 does reflect the facts as proven and found by the Master and approved by the Court.

Paragraph 13 should be amended to read as follows:

"13. The Petitioner, since September 22, 1937, has done all things and performed all acts necessary under said Plan of Composition and required thereby in the performance of the same, excepting that, because of the requirement of certain peremptory writs of mandamus issued by this Court ordering the Petitioner to make special tax levies to service judgments upon mature bonds and coupons, the Petitioner has up to the fiscal year 1942-43 reduced the amount of the minimum debt service tax levy required by the Plan of Composition in proportion to the amount of bonds being serviced by said special tax levies made pursuant to said peremptory writs of mandamus, and the Petitioner, having been relieved of the necessity of making said special tax levies in the fiscal year 1942-43 by order of this Court, entered August 27, 1942 and recorded in Minute Book 24 as page 939, is now ordered and directed to do and perform and carry out all of its obligations and duties under the said Plan of Composition as if the same had been actually consummated and completed as to all of the City's indebtedness affected by said Plan and by these proceedings."

14.

We have no objection to the addition to paragraph 14 of the Interlocutory Decree of the phrase proposed by the

Bank and Wright, but do not think that it is appropriate since the law gives this right to the objecting creditors regardless of whether the Interlocutory Decree attempts to cut it off or not. Furthermore, the draft of paragraph 14 submitted by the Petitioner does not cut off the right of any objecting creditor to file an appeal or petition for certiorari.

15.

The proposed amendment to add the words "as of September 22, 1937" at the end of paragraph 15 is inappropriate because this Plan of Composition cannot be consummated as of September 22, 1937 and the Court and no one else knows when the same will be consummated.

Respectfully submitted,
THE CITY OF CORAL GABLES, FLORIDA,
By its Attorneys at Law.
MORTON B. ADAMS,
IRA C. HAYCOCK,
D. H. REDFEARN.

On November 20, 1942, Ed. C. Wright and American National Bank of Nashville filed further motion concerning form of proposed interlocutory decree, in words and figures as follows, to-wit:

FURTHER MOTION CONCERNING FORM OF PROPOSED INTERLOCUTORY DECREE.

1949 (Title Omitted.)

Ed. C. Wright and The American National Bank of Nash-

ville, Tennessee, by their undersigned attorneys, respectfully show the following:

1. At a hearing held herein October 13, 1942, counsel for the Petitioner submitted to the Court, and requested the Court to use, a proposed form of Interlocutory Decree.

2. If said form shall be used as an Interlocutory Decree herein, the paragraphs thereof numbered 6, 7, 8 and 9 will provide that the claims of six creditors, to-wit: Fiduciary Council, Inc., C. J. Root, Augustus T. Ashton, Lois Harmon, W. J. Noel and G. E. Vallette, shall not be refunded as of January 1, 1937, in accordance with the Petitioner's so-called Plan of Composition (Ordinance #269, as amended by Ordinance #289), and will provide that in lieu of being so refunded, the claims of each of said creditors shall be refunded as of July 1, 1940, a day subsequent to the institution of this proceeding.

3. After said proposed form of Interlocutory Decree had been so submitted, the provisions of said numbered paragraphs were orally argued, at said hearing, by counsel for the Petitioner and counsel for creditors, and in the course of such argument, counsel for the Petitioner orally conceded that the formula set out in said paragraphs numbered 7, 8 and 9 for the issuance of Tax Participation Certificates to said C. J. Root should be changed, but did not state the exact language nor wording of the change so to be made.

4. At said hearing, counsel for the Petitioner also orally admitted that the formula set out in said paragraphs numbered 7, 8 and 9 for the refunding of the claim of said Fiduciary Council, Inc., cannot be followed unless the Petitioner shall deliver to said Fiduciary Council, Inc., a

part of certain Refunding Bonds and Tax Participation Certificates in the possession of the Petitioner, the possession whereof was obtained by the Petitioner in the following manner: After September, 1937, but prior to the institution of this proceeding, the Petitioner paid to said Fiduciary Council, Inc., the sum of $8,000 in cash, in partial satisfaction of a judgment theretofore obtained by said Fiduciary Council, Inc., against Petitioner, on securities described in said so-called Plan of Composition as securities to be refunded as of January 1, 1937, the unpaid balance of which judgment constitutes one of the claims referred to in said paragraphs numbered 6, 7, 8 and 9, as claims to be refunded as of July 1, 1940, but the Petitioner, notwithstanding the partial satisfaction of said judgment to the extent of the $8,000 so paid, did not treat, and has never treated, said judgment as having been partially satisfied. In lieu of treating said judgment as having been partially satisfied to the extent of $8,000, the Petitioner treated said partial satisfaction of said judgment as being the purchase and assignment to itself of $8,000 thereof, and issued to itself, and has since been holding, and is now holding $4,000 par value of the Refunding Bonds provided for in said so-called Plan of Composition, and $4,000 par value of the Tax Participation Certificates provided for in said so-called Plan of Composition, and has been, and is, paying to itself, interest on said $4,000 par value of Refunding Bonds and liquidating dividends on said $4,000 par value of Tax Participation Certificates.

5. The admission of counsel for the Petitioner was that the claim of said Fiduciary Council, Inc., on the unsatisfied balance of said judgment, cannot be refunded as of July 1, 1940, in the manner provided in said paragraphs numbered 6, 7, 8 and 9, unless the Petitioner shall deliver to said Fiduciary Council, Inc., a part of said $4,-

000 par value of Refunding Bonds so acquired, and a part of said $4,000 par value of Tax Participation Certificates so acquired.

Wherefore, Ed. C. Wright and The American National Bank of Nashville, Tennessee, move the Court as follows:

1. To find as a fact, and state in the record herein, that the matters and things set out in the paragraphs hereof numbered 1 to 5, inclusive, are true.

2. If an Interlocutory Decree purporting to confirm said so-called Plan of Composition is to be entered herein, to set out in such Interlocutory Decree:

(a) the exact amount of refunding bonds to be delivered by the Petitioner to each creditor named in the paragraph hereof numbered 2

(b) whether the Petitioner shall be authorized to deliver to any of such creditors any refunding bonds now held by the Petitioner as previously issued, outstanding refunding bonds, and if so, the exact amount thereof to be delivered to each of such creditors

(c) the exact amount of tax participation certificates to be delivered by the Petitioner to each creditor named in the paragraph hereof numbered 2

(d) whether the Petitioner shall be authorized to deliver to any of such creditors any tax participation certificates now held by the Petitioner as previously issued, outstanding tax participation certificates, and if so, the

exact amount thereof to be delivered to each of such creditors.

Respectfully submitted,
F. A. BERRY,
BASS, BERRY & SIMS,
WYLIE & WARREN,
Attorneys for The American National Bank of Nashville, Tennessee.
S. O. CARSON,
MILLER WALTON,
CASEY, WALTON & SPAIN,
Attorneys for Ed. C. Wright.
By MILLER WALTON,
Of Counsel.

State of Florida,
County of Dade, ss.

Miller Walton, being duly sworn, deposes and says that he is of counsel and one of the attorneys of record for Ed. C. Wright in the proceeding shown by the title of the attached and foregoing Motion, that he has read said Motion and knows the contents thereof, and that the matters and things set out in paragraphs numbered 1 to 5, inclusive, are true.

MILLER WALTON.

Sworn to and subscribed before me this 17th day of October, 1942.

JENNIE M. WALKER,
(Seal) Notary Public, State of Florida at Large.

My Commission expires December 14, 1943.

On November 20, 1942 Order approving and fixing fees was filed in words and figures as follows, to-wit:

ORDER APPROVING AND FIXING FEES.

1955 (Title Omitted.)

This cause came on to be further heard after due notice, upon the Report of the Special Master requesting the entry of an order allowing him a reasonable compensation for his services in this cause, and upon the application of the Petitioner for approval of the Attorneys' fee agreed to be paid to the Attorneys for the Petitioner, and the Court being fully advised in the premises, it is

Considered And Ordered:

1. That reasonable compensation to the Special Master for his services as such in this cause is the sum of Ten Thousand ($10,000.00) Dollars, and the Petitioner be and it is, hereby, ordered and directed to pay such fee to the Special Master.

2. That the total lump sum fee in the amount of Thirty-two Thousand, Five Hundred ($32,500.00) Dollars, which the Petitioner has agreed to pay its Attorneys, Morton B. Adams, D. H. Redfearn and Ira C. Haycock, for their legal services rendered and to be rendered in behalf of the Petitioner in the prosecution of these proceedings, be and the same is, hereby, approved and allowed by the Court.

Done And Ordered at Miami, Dade County, Florida, this 20th day of November, A. D. 1942.

JOHN W. HOLLAND,
District Judge.

On November 20, 1942 order was filed in words and figures as follows, to-wit:

1957 ORDER.

(Title Omitted.)

On October 13, 1942, this cause came on for further hearing, the Special Master's report having theretofore been approved. An interlocutory decree was proposed by the petitioner and certain creditors through counsel appeared and filed objections to the form of the proposed decree. The matter was taken under advisement, and counsel for the petitioner and for the objecting creditors were allowed a period of time for the filing of any additional papers that they desired to file in connection with the entry of an interlocutory decree.

The Court has duly considered the matters presented at that time and presented by submitted petitions and objections filed thereafter, and the Court being advised in the premises;

It is now Ordered:

I.

The request of C. J. Root that the following be added to Paragraph 10 of the decree proposed by the petitioner is Denied. Said request so denied is as follows:

That all moneys collected prior to the date of this decree from special tax levies for the tax year 1941-42 and all previous years which were levied for the purpose of paying securities held by the creditors, Fiduciary Council,

Inc. and C. J. Root, shall be paid forthwith to said Fiduciary Council, Inc. and C. J. Root, respectively, and shall be applied and credited to the sums due said creditors before making exchange under the Plan of Composition, and the face amount of Tax Participation Certificates to be received upon exchange by each of said creditors shall be reduced by the amount of such credit."

II.

The petition of Augustus T. Ashton to authorize and direct The City to disburse funds to Augustus T. Ashton is Denied.

III.

The petition of Fiduciary Council, Inc. to authorize and direct The City to disburse funds to Fiduciary Council, Inc. is Denied.

IV.

The further motion of Ed. C. Wright and the American National Bank of Nashville, Tennessee, concerning form of proposed interlocutory decree is Denied.

V.

The motion of American National Bank of Nashville, Tennessee, for additional and amended findings of fact and conclusions of law is Denied.

VI.

The motion of Ed. C. Wright and the American National Bank of Nashville, Tennessee, for entry of interlocutory decree pursuant to order of August 19, 1942, is Denied.

VII.

The motion of Ed. C. Wright for additional and amended findings of fact and conclusions of law is Denied.

VIII.

The motion of the American National Bank of Nashville, Tennessee, for additional and amended findings of fact and conclusions of law is Denied.

In connection with making the above orders I desire to comment upon the paragraph of the Court's order made August 19, 1942, wherein the Court discussed the question of whether or not the interest coupons held by the American National Bank of Nashville, Tennessee, were negotiable instruments. I have re-examined this question. The interest coupon in Case No. 2466-M, lately pending in this Court, bore a lithographed signature. I remain of the opinion that there is grave doubt in my mind if a lithographed signature conforms to the requirements of Section 6751, Compiled General Laws of Florida, 1927, where it is distinctly stated that there must exist as one of its necessary elements the fact that the instrument in question was signed. However, this is but an added reason, and I am of the opinion, as was stated in the order of August 19, 1942, the Master's conclusions with reference to the claim of the American National Bank were correct, and should be approved.

Done and Ordered at Miami, Florida, this 20th day of November, 1942.

(S.) JOHN W. HOLLAND,
United States District Judge.

On November 20, 1942, Interlocutory Decree confirming Plan of Composition was filed in words and figures as follows, to-wit:

INTERLOCUTORY DECREE CONFIRMING PLAN OF COMPOSITION.

1960 (Title Omitted.)

This cause came on for hearing, after due notice, upon the Special Master's Report filed herein on May 8, 1942, and the objections and exceptions filed thereto, and the Court having heard the arguments of attorneys for the respective parties and having considered the Master's Report and the entire record in the cause, and having entered an Order dated August 19, 1942, filed August 19, 1942 and recorded in Minute Book 24, at page 83, and in said order having approved, confirmed and adopted the findings and conclusions of fact and law as made by the Special Master and as supplemented by those of the Court as and for the findings and conclusions of the Court, it is, therefore,

Ordered, Adjudged and Decreed by the Court, as follows:

1. That, as of June 27, 1940, being the date the Petition was filed in this cause, and as of September 22, 1937, the date when the plan of settlement was placed in effect by the Petitioner, the Petitioner was insolvent and unable to meet its debts as they matured.

2. That the holders of all claims based on the obligations of The City of Coral Gables, set out in the Plan of Composition, and which have been admitted by the Peti-

tioner or allowed by the Judge, are hereby classified as creditors of the same class; and the Court finds that there is but one class of creditors, namely, those having claims payable without preference from the proceeds of ad valorem debt service taxes levied pursuant to the Charter authority of the said City and that there are no claimants having either specific property or revenues pledged for the payment of said claims.

3. That having carefully examined all the contracts, proposals, acceptances, deposit agreements, and all other papers relating to the plan, for the specific purpose, the Court finds that no fiscal agent, attorney or other person, firm or corporation promoting the composition or doing anything of such a nature has been or is to be compensated directly or indirectly by both the Petitioner and the creditors of the Petitioner or any of such creditors, either by fee, commission or similar payment, or by transfer or exchange of bonds or other evidence of indebtedness whereby a profit could accrue.

4. That the Plan of Composition set out in Ordinance No. 269, as amended by Ordinance No. 289, and placed in effect by voluntary agreement between the Petitioner and over 90 per cent. of its creditors on September 22, 1937 (a) is fair, equitable and for the best interests of the creditors and does not discriminate unfairly in favor of any creditor or class of creditors; (b) complies with the provisions of Chapter IX of the Federal Bankruptcy Law as amended; (c) has been accepted and approved as required by subsection d, of Section 403, of said Chapter IX; (d) that all amounts paid and to be paid by the Petitioner for services and expenses incident to the Plan of Composition have been fully disclosed and are reasonable; (e) that the offer of said Plan of Composition and the acceptances of the same are in good faith; and (f) that the Peti-

tioner is authorized by law to take all necessary action to be taken by it to carry out the said Plan of Composition.

5. That said Plan of Composition be and the same is, hereby, approved and confirmed, and that all objections thereto and all answers and motions to dismiss filed in objection to said Plan or to the validity of this proceeding or the constitutionality of Chapter IX of the Bankruptcy Act, be and the same are, hereby, overruled and dismissed; and the objections and exceptions to the Special Master's Report and findings of fact and conclusions of law be and the same are, hereby, overruled and denied.

6. That the claimants, Fiduciary Counsel, Inc., C. J. Root, Augustus T. Ashton, Lois Harmon, W. J. Noel and G. E. Vallette, each have a vested right in and to all of the moneys paid to each of them by the Petitioner prior to the filing of the petition in this cause out of the proceeds of special earmarked tax levies made by the Petitioner for the benefit of the said claimants; and that no claimants have rights which have become vested, other than those hereinabove described.

7. That the balance, as of July 1, 1940, of the indebtedness of all creditors holding judgments and peremptory writs of mandamus against the Petitioner shall be refunded as of January 1, 1937 in the manner and according to the provisions of the Plan of Composition set out in Ordinance No. 269, amended by Ordinance No. 289, except that all coupons on Refunding Bonds falling due on and prior to July 1, 1940 shall be detached and such coupons canceled before exchange with such creditors. Such creditors, however, shall be entitled to receive at the time of refunding in cash out of funds other than those provided for in said Plan of Composition liquidation dividends on Tax Participation Certificates at the rate such dividends

were paid to the holders of outstanding certificates in the fiscal years 1937-38 through 1941-42.

8. That in calculating the balance due on the judgment and on the obligations included in the agreement in favor of claimant C. J. Root, interest on the balances due on the judgment shall be figured at the rate of five (5%) per centum per annum and interest on the balances due on the indebtedness covered only by the agreement shall be figured at the rate show in the face of the bonds included in the agreement and not at the modified rate of interest agreed to between the parties.

9. That in calculating the balance due on the judgment in favor of claimant Fiduciary Council, Inc. interest on the balances due on the judgment shall be figured at the rate of five (5%) per centum per annum and not at the modified rate of interest agreed to between the parties.

10. That that portion of the Temporary Injunction and Stay Order dated July 26, 1940 and filed herein on August 3, 1940, which required the Petitioner City to continue to make the special earmarked tax levies under the existing peremptory writs of mandamus in the several cases listed and described in said Order, be and the same is, hereby, vacated and set aside; and that portion of the aforesaid Stay Order requiring the Petitioner City to hold the proceeds from said special spread tax levies and the proceeds of delinquent special tax levies made pursuant to the said peremptory writs of mandamus, and restraining the Petitioner from disbursing the same, be and the same is, hereby, vacated and set aside.

11. That within 30 days after the entry of this Interlocutory Decree, the Petitioner City shall cause to be published in The Miami Herald and the Miami Daily News,

newspapers published in Miami, Florida, and The Bond Buyer, a paper published in the City of New York, State of New York, having general circulation among bond dealers and bond owners, once a week in each of said three papers, for two consecutive weeks, a Notice to the holders of outstanding unrefunded bonds and coupons of the Petitioner and of judgments against the Petitioner affected by the Plan of Composition, that the Plan of Composition has been confirmed by this Court and that the original unrefunded bonds and coupons and satisfactions of judgments against the Petitioner affected by the said Plan must be produced to the City for exchange in accordance with the terms of the Plan of Composition.

12. That the Petitioner City shall forthwith, upon the presentation of its original unrefunded bonds and coupons and upon the presentation of satisfactions of judgments affected by the Plan of Composition, exchange such evidences of indebtedness affected by the Plan of Composition with such claimants for the Refunding Bonds and Tax Participation Certificates to which the several claimants shall be entitled under the Plan of Composition, and the Petitioner City at the time of such exchanges shall pay to such claimants in cash all sums past due and owing to them in accordance with the obligations of the Refunding Bonds and Tax Participation Certificates delivered in exchange for such unrefunded obligations, and on or before sixty (60) days from the date of this decree the Petitioner City shall report to the Court in detail the progress of such refunding of its unrefunded obligations affected by the Plan of Composition.

13. The Petitioner, since September 22, 1937, has done all things and performed all acts necessary under said Plan of Composition and required thereby in the performance of the same, excepting that, because of the require-

ment of certain peremptory writs of mandamus issued by this Court ordering the Petitioner to make special tax levies to service judgments upon mature bonds and coupons, the Petitioner has up to the fiscal year 1942-43 reduced the amount of the minimum debt service tax levy required by the Plan of Composition in proportion to the amount of bonds being serviced by said special tax levies made pursuant to said peremptory writs of mandamus, and the Petitioner, having been relieved of the necessity of making said special tax levies in the fiscal year 1942-43 by order of this Court, entered August 27, 1942 and recorded in Minute Book 24 at page 939, is now ordered and directed to do and perform and carry out all of its obligations and duties under the said Plan of Composition as if the same had been actually consummated and completed as to all of the City's indebtedness affected by said Plan and by these proceedings.

14. That any and all holders of the outstanding unrefunded indebtedness of the Petitioner City, affected by the Plan of Composition, be and they are hereby enjoined, pending the entry of final decree herein, from attempting the enforcement or collection of any claim, judgment or lien by legal proceedings or otherwise which they may have against the Petitioner or against any of the lands situate within the Petitioner district and owned by individuals.

15. That this Court, hereby, expressly retains jurisdiction herein to supervise the consummation of said Plan of Composition and for the purpose of entering a final decree herein and such additional orders as may be necessary to make said Plan of Composition fully effective when consummated.

Done And Ordered at Miami, Dade County, Florida, this 20th day of November, A. D. 1942.

JOHN W. HOLLAND,
United States District Judge.

On December 19, 1942 Ed. C. Wright filed Notice of Appeal in words and figures as follows, to-wit:

1966 NOTICE OF APPEAL.

In the District Court of the United States for the Southern District of Florida. Miami Division.

No. 1867-M-Bankruptcy.

In the Matter of
The City of Coral Gables, Florida, Petitioner,

In Proceedings for a Composition by a Public Debtor.

Notice is hereby given that Ed. C. Wright, doing business as Ed. C. Wright and Company, successor to Ed. C. Wright and Company, Inc., hereby appeals to the United States Circuit Court of Appeals for the Fifth Circuit, from the Interlocutory Decree entered herein November 20, 1942, and from the separate Order entered herein on said date denying Motions submitted by him.

CASEY, WALTON & SPAIN,
Attorneys for Ed. C. Wright.
By MILLER WALTON,
Of Counsel.

Addresses:
Casey, Walton & Spain,
Miller Walton,
S. O. Carson,
1312-19 Congress Building,
Miami, Florida.

On December 19, 1942 American National Bank of Nashville, filed Notice of Appeal in words and figures as follows, to-wit:

1967 NOTICE OF APPEAL.

In the United States District Court in and for the Southern District of Florida.

In the Matter of:
The City of Coral Gables, Florida, Petitioner.
In Bankruptcy No. 1867-M.

Notice Is Hereby Given that The American National Bank of Nashville, a petitioning creditor in the above named proceeding, hereby appeals to the Circuit Court of Appeals for the Fifth Circuit, from the Interlocutory Decree entered in the above styled Bankruptcy Proceedings No. 1867-M on the 20th day of November 1942, and from the Order entered in said proceedings on the same date.

STUART B. WARREN,

Hall Building,
St. Petersburg, Florida.

BASS, BERRY & SIMS,
FRANK A. BERRY,

1000 American Trust Building,
Nashville, Tennessee.

By F. A. BERRY,
Attorneys for Petitioning Creditor, The American National Bank of Nashville.

On January 22, 1943 Order extending time for filing record was filed in words and figures as follows, to-wit:

ORDER EXTENDING TIME FOR FILING RECORD.

1968 (Title Omitted.)

For satisfactory reasons appearing to the Court, the time for filing the record in the above styled cause in the Circuit Court of Appeals, pursuant to F. R. C. P. 73(g), is hereby extended to and including the 18th day of March, 1943.

Done And Ordered at Miami, Florida this 7th day of January, 1943.

(S.) JOHN W. HOLLAND,
United States District Judge.

On January 22, 1943 Ed. C. Wright Filed Statement of Points on Appeal in words and figures as follows, to-wit:

STATEMENT OF POINTS ON APPEAL OF ED. C. WRIGHT.

1969 (Title Omitted.)

On the appeal taken herein by Ed. C. Wright, he intends to rely on the following points:

1. The Interlocutory Decree is erroneous:

(a) It discriminates unfairly among creditors of the same class, by commanding that the claims of five known

creditors, and of the unknown holders of fifty bonds, shall be refunded as of January 1, 1937, and that the claims of six other known creditors shall be refunded as of July 1, 1940, a day subsequent to the institution of this proceeding.

(b) Its effect is to approve and confirm a series of preferential and discriminatory settlements made by Petitioner during the supposed partial completion of the so-called plan of composition, each settlement having been made on the basis of the "best trade possible," and to coerce the acceptance by this creditor of terms less favorable than those accorded in such settlements.

2. Confirmation of the so-called plan of composition should have been denied, and the proceeding dismissed, on one or more of the following grounds:

(a) The plan of refunding and settlements under which Petitioner operated from October 18, 1937, until the institution of this proceeding June 27, 1940, is not a partially executed plan of composition within the meaning of § 83(j) of the Bankruptcy Act, because it did not require that equality of treatment be accorded creditors of the same class, but expressly authorized and sanctioned preferences and discrimination among creditors, by providing for the making of the "best trade possible" with any creditor who refused to accept the general refunding terms.

(b) Petitioner departed from, abandoned, and destroyed the general refunding terms as a plan of composition which might have been confirmable, either initially or "now for then," by operating under the plan of refunding and settlements from October 18, 1937, until the institution of this proceeding June 27, 1940, in the course of which operation Petitioner made twenty-nine preferential

and discriminatory settlements on the "best trade possible" basis, involving claims aggregating $598,448.17, with creditors whose refusal to accept the general refunding terms resulted in their receiving $263,961.34 cash and $13,000 par value of refunding bonds instead of the refunding bonds and tax participation certificates which would have been issued to them had Petitioner coerced their acceptance of the general refunding terms.

(c) The making of the preferential and discriminatory settlements, in accordance with the express authorization in the plan of refunding and settlements, forever estopped and debarred Petitioner from coercing the acceptance of the general refunding terms by other creditors, hence the attempted reenactment of the general refunding terms March 5, 1940, as a partially executed plan of composition, was abortive and not in good faith.

(d) If the plan of refunding and settlements under which Petitioner operated from October 18, 1937, until the institution of this proceeding June 27, 1940, can be deemed to be a partially executed plan of composition, it is unfair, inequitable, and discriminates unfairly in favor of the creditors with whom settlements were made on the basis of the "best trade possible," because it offered to them, and they accepted and received, a form of consideration different from and more valuable than the refunding bonds and tax participation certificates issuable under the general refunding terms, and the result of confirming the plan of refunding and settlements, as a partially executed plan of composition, would be to coerce the acceptance by this creditor of different and less valuable consideration than was received by the creditors with whom the "best trade possible" settlements were made.

(e) The offer of the general refunding terms, as a partially executed plan of composition, was not in good

faith, in that Petitioner, in submitting the general refunding terms to the creditors and the Court, as a partially completed plan of composition, and in soliciting the acceptances of creditors, did not disclose to either the creditors or the Court that the plan of refunding and settlements under which Petitioner operated from October 18, 1937, until the institution of this proceeding June 27, 1940, expressly authorized the making of the "best trade possible" with any creditor who refused to accept the general refunding terms, and did not disclose to either the creditors or the Court that pursuant to the express authorization, preferential and discriminatory settlements had been made on the "best trade possible" basis with creditors who refused to accept the general refunding terms.

(f) The acceptance of the general refunding terms, as a partially executed plan of composition, was not in good faith, because numerous accepting creditors, through their representatives, were informed of, and approved, consented to and authorized, the settlements on the "best trade possible" basis, hence such accepting creditors cannot be counted as good faith acceptors for the purpose of coercing this creditor to accept less than was received by the creditors with whom the "best trade possible" settlements were made.

(g) Prior to July 26, 1940, Petitioner was obligated to make the several tax levies covenanted for and required in and by the Ordinances authorizing and offering the general refunding terms, and to perform all other obligations which it had voluntarily assumed in and by the Ordinances, but had never made such tax levies, nor performed such other obligations, and by an Order rendered herein July 26, 1940, Petitioner was directed and commanded "pending the final determination of this matter or until the further order of" the Court, to "fully

perform all of its obligations under its plan of composition as to all outstanding obligations of the petitioner affected thereby," and to "also make the said spread levies hereinabove ordered and directed to be made", but Petitioner has never made the several tax levies covenanted for and required in and by the Ordinances, and has never performed the other obligations imposed thereby.

(h) Petitioner is not authorized by law to take all action necessary to be taken by it to carry out the general refunding terms, as a partially executed plan of composition, in that Petitioner is not authorized by the law of Florida to refund the claims of six creditors, to-wit: Fiduciary Council, Inc., C. J. Root, Augustus T. Ashton, Lois Harmon, W. J. Noel and G. E. Vallette, as of January 1, 1937, in accordance with and as required by the general refunding terms.

3. In entering the Interlocutory Decree, the District Court exceeded the jurisdiction conferred by Chapter IX of the Bankruptcy Act, in the following respects:

(a) Petitioner submitted the general refunding terms as a partially executed plan of composition, but the Interlocutory Decree does not confirm the general refunding terms as being those on which the claims of creditors shall be refunded, nor does it dismiss the proceeding. Instead, the Interlocutory Decree directs and commands that the claims of five known creditors, and of the unknown holders of fifty bonds, shall be refunded as of January 1, 1937, in accordance with and as required by the general refunding terms, but further directs and commands that the claims of six other known creditors shall be refunded as of July 1, 1940, a day subsequent to the institution of this proceeding, although the general refunding terms make no provision for any such refunding, and such refunding has not been consented to by any creditor.

(b) By commanding in the Interlocutory Decree that the claims of six creditors be refunded as of July 1, 1940, the District Court, of its own initiative, altered and changed the so-called plan of composition in a manner neither offered by Petitioner nor accepted by any creditor, and in so doing, acted wholly independent, and not in confirmation, of any attempted contract between Petitioner and the requisite majority of creditors.

CASEY, WALTON & SPAIN,
Attorneys for Ed. C. Wright.
By MILLER WALTON,
Of Counsel.

Addresses:
Casey, Walton & Spain,
Miller Walton,
S. O. Carson,
1312-19 Congress Building,
Miami, Florida.

United States of America,
Southern District of Florida,
Miami Division, ss.

Helen Andrews, being duly sworn, deposes and says she is employed by Casey, Walton & Spain, Attorneys at Law, Miami, Florida, and on January 21, 1943, she mailed a true copy of the foregoing Statement of Points to each of the following, at the respective addresses set out in conjunction with their names:

Morton B. Adams, Esq.,
Attorney at Law,
Ingraham Building,
Miami, Florida.

Ira C. Haycock, Esq.,
Attorney at Law,
Congress Building,
Miami, Florida.

D. H. Redfearn, Esq.,
Attorney at Law,
Shoreland Building,
Miami, Florida.

Frank A. Berry, Esq.,
Attorney at Law,
1000 American Trust Building,
Nashville, Tennessee.

W. Terry Gibson, Esq.,
Attorney at Law,
209 South Olive Avenue,
West Palm Beach, Florida.

and that to the best of her knowledge, information, and belief, said addresses are the last known addresses of the persons to whom said copies were mailed.

HELEN ANDREWS.

Sworn to and subscribed before me this 21st day of January, 1943.

JENNIE M. WALKER,
Notary Public, State of Florida at Large.

(N. S.)

My Commission expires: December 14, 1943.

1974 On January 22, 1943 Designation of Record on Appeal of Ed. C. Wright was filed in words and figures as follows, to-wit:

DESIGNATION OF CONTENTS OF RECORD ON APPEAL OF ED. C. WRIGHT.

(Caption Omitted.)

On the appeal taken herein by Ed. C. Wright, he hereby designates the following portions of the record, proceedings and evidence, to be contained in the record on appeal:

1. Petition for Composition of Debts, filed June 27, 1940.

2. Exhibits C. D. 1, 2, 3 and 4, filed with said Petition on June 27, 1940.

3. Order, filed June 27, 1940, and recorded in Minute Book 20, page 886.

4. Temporary Injunction and Stay Order, filed August 3, 1940 and recorded in Minute Book 21, page 101.

5. Proof of Claim of Ed. C. Wright & Company, filed August 24, 1940.

6. Answers and Objections of Ed. C. Wright & Company, a Creditor, filed September 10, 1940.

7. Motion for an Order Approving a Modification of the Plan of Composition as submitted by the Debtor, filed September 10, 1940.

8. Order, filed October 9, 1940 and recorded in Minute Book 21, page 331.

9. Amendment to Answer and Objections of Ed. C. Wright & Company, filed October 9, 1940.

10. Motion, filed by Ed. C. Wright & Company on October 9, 1940.

11. Objections to Claims, filed October 9, 1940.

12. Response to Motion or petition of Ed. C. Wright & Company for Order Approving Modification of the Plan of Composition as Submitted by the City of Coral Gables, filed October 12, 1940.

13. Motion to Strike, filed October 19, 1940.

14. Order Appointing F. M. Hudson, Special Master, filed October 19, 1940 and recorded in Minute Book 21, page 376.

15. Interrogatories propounded by City of Coral Gables, Florida (to Ed. C. Wright & Company), filed July 3, 1941.

16. Objections to Interrogatories propounded by City of Coral Gables, Florida, filed July 21, 1941.

17. Order, filed August 5, 1941, and recorded in Minute Book 22, page 920.

18. Amendment to Objections to Interrogatories, filed before Master August 5, 1941.

19. Answers of Ed. C. Wright & Company to Interrogatories propounded by Petitioner, filed before Master August 21, 1941.

20. Report of the Special Master, filed May 8, 1942.

21. Transcript of Testimony before Special Master, Volumes 1, 2 and 3, filed May 8, 1942.

22. Petitioner's Evidentiary Exhibits Numbers 5, 10, 12, 14, 17, 19, 20, 21, 30a, 43, 49 and 53.

23. Defendant's Evidentiary Exhibits Numbers 1, 2, 3, 5 (pp. 8 and 9), 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 35, 38, 43, 44, 45, 47, 48, 52, 55 and 57.

24. Transcript of Proceedings, etc., before Special Master on special issue on behalf of C. J. Root and Fiduciary Counsel, Inc., filed May 8, 1942.

25. Special Issue Exhibit A (entitled Stipulation and Agreed Statement of Facts), filed before Master January 31, 1941, (but omit Special Issue Exhibit E. attached thereto as Exhibit 1).

26. Special Issue Exhibit C (entitled Stipulation between City and C. J. Root) filed before Master January 9, 1942.

27. Special Issue Exhibit F attached as Exhibit D to "Objections of C. J. Root to Entry of Stay Order"—filed July 26, 1940.

28. Special Issue Exhibit I (entitled Stipulation), filed before Master January 31, 1941.

29. Objections of Ed. C. Wright to Master's Report, filed May 18, 1942.

29½. From the Transcript of Arguments before Honorable John W. Holland, District Judge, on Objections and Exceptions to Report of Master, filed August 19, 1942 the following portions of the argument of Morton B. Adams, of counsel for Petitioner:

a. Beginning with line 9, page 137, to and including line 25, page 139.

b. Beginning with line 21, page 146, to and including line 6, page 148.

c. Beginning with line 14, page 154, to and including line 21, page 161.

d. Beginning with line 14, page 174, to and including line 10, page 187.

e. Beginning with line 8, page 198, to and including line 20, page 200.

f. Beginning with line 18, page 201, to and including all of page 222.

30. Order, filed August 19, 1942 and recorded in Minute Book 24, page 883.

31. (Copy of Petitioner's Proposed) Interlocutory Decree Confirming Plan of Composition, filed January 19, 1943.

32. Motion for Additional and Amended Findings of Fact and Conclusions of Law (Ed. C. Wright), filed November 20, 1942.

33. Motion for Entry of Interlocutory Decree pursuant to Order of August 19, 1942, filed November 20, 1942.

34. Petitioner's Answers to Motions of Objecting Creditors for additional and amended findings of fact and conclusions of law, filed November 20, 1942.

35. Petitioner's Answers to Motions heretofore filed by American National Bank of Nashville, Tennessee, Ed. C. Wright, C. J. Root, Fiduciary Counsel, Inc., and Augustus T. Ashton, relative to amendments to the Interlocutory Decree proposed by the Petitioner, filed November 20, 1942.

36. Further Motion concerning form of proposed Interlocutory Decree, filed November 20, 1942.

37. Order approving and fixing fees, filed November 20, 1942, and recorded in Minute Book 25, page 270.

38. Order, filed November 20, 1942 and recorded in Minute Book 25, page 272.

39. Interlocutory Decree confirming Plan of Composition, filed November 20, 1942, recorded in Minute Book 25, page 263.

40. Notice of Appeal, filed by Ed. C. Wright on December 19, 1942.

41. Order extending time for filing record, filed January 7, 1943.

42. Statement of Points on Appeal, filed January 22, 1943.

43. This Designation.

CASEY, WALTON & SPAIN,
Attorneys for Ed. C. Wright.
By MILLER WALTON,
Of Counsel.

1978 On February 1, 1943 The City of Coral Gables, Florida filed its Designation of Additional Portions of Record on Appeal in words and figures as follows, to-wit:

DESIGNATION BY APPELLEE, OF ADDITIONAL PORTIONS OF THE RECORD ON APPEAL OF ED. C. WRIGHT.

(Caption Omitted.)

To The Clerk of the Above Styled Court:

You will please include in the Transcript of the Record in the above styled cause for use on appeal to the Circuit Court of Appeals of the Fifth Judicial Circuit of the United States, in addition to the papers designated by the Appellant Ed. C. Wright, the following protions of the record, proceedings and evidence:

1. Interrogatories propounded by The City of Coral Gables, Florida, to American National Bank of Nashville, Tennessee, filed July 3, 1941.

2. Objections to Interrogatories Propounded by The City of Coral Gables, Florida, by American National Bank of Nashville, Tennessee, filed July 17, 1941.

3. Supplemental Objections to Interrogatories, by American National Bank of Nashville, Tennessee, filed July 21, 1941.

4. Answer of American National Bank of Nashville, Tennessee, to Interrogatories propounded to it on behalf of The City of Coral Gables, Florida, filed before Master August 21, 1941.

5. Petitioner's Evidentiary Exhibit 43, and Exhibit 49 (Omitting detailed description of coupons in paragraphs VIII, XIII and XIX of the Alternative Writ reciting in lieu thereof "Detailed description of coupons omitted", and omitting Exhibits A to F, inclusive, attached to the Alternative Writ).

6. Defendants' Evidentiary Exhibits No. 22, 23, 24, 25 and 57.

7. The following portions of the transcript of arguments before Honorable John W. Holland, District Judge, on objections and exceptions to Report of Master, filed August 19, 1942:

From argument of Morton B. Adams, of Counsel for Petitioner, in addition to the portions of his argument directed to be included by Appellant Ed. C. Wright (designation No. 29½):

(a) Beginning with line 25, page 137 to and including line 25, page 139.

(b) Beginning with line 5, page 147 to and including line 6, page 148.

(c) Beginning with line 14, page 154 to and including page 158 except the last line; and beginning with line 5, page 160 to and including line 21, page 161.

(d) Beginning with line 14, page 174 to and including line 1, page 175.

(e) Beginning with line 14, page 199 to and including line 20, page 200; and beginning with line 18, page 201 to and including line 1, page 204.

(f) Beginning with line 2, page 221 to and including all of page 222.

8. Motion to vacate portion of temporary injunction and stay order, filed August 27, 1942.

9. Order modifying stay order, filed August 27, 1942 and recorded in Minute Book 24, page 939.

10. This designation of additional portions of the record.

Dated this 1st day of February, 1943.

D. H. REDFEARN,
IRA C. HAYCOCK,
MORTON B. ADAMS,
Attorneys for The City of Coral Gables.
By MORTON B. ADAMS,
Of Counsel.

On February 11, 1943 American National Bank of Nashville filed Statement of Points on Appeal in words and figures as follows, to-wit:

STATEMENTS OF POINTS ON APPEAL OF THE AMERICAN NATIONAL BANK OF NASHVILLE.

1980 (Title Omitted.)

1. Each and every point set out and designated by Appellant, Ed. C. Wright, in his Statement of Points of Appeal, as if again copied herein.

2. The Court erred in issuing a temporary restraining order on January 25, 1941 and making such order permanent, enjoining the American National Bank from propounding direct to consenting creditors in this cause interrogatories seeking to show the interest and ability to consent of the alleged consenting creditors. Appellant was entitled to have these interrogatories and the evidence adduced thereby considered by the Court in determining whether the statutory number of legal consents had been obtained.

3. The entry of the interlocutory decree sustaining the plan of composition and the order finding facts and directing the entry of the decree which was filed August 19, 1942 are erroneous in that

(a) The Court should have held that the coupons detached from bonds of the City of Coral Gables mentioned and described in full in proof of claim of appellant were negotiable instruments held by appellant in due course for value.

(b) That the plan of composition as affirmed discriminates unfairly against holders of coupons, expecially those holding no bonds, and in favor of holders of bonds.

4. The Court erred in holding that appellant, who was a creditor holding coupons only, was not on a parity with creditors holding bonds and other claims and must show some special equity to be treated on a parity with other creditors. (See order of August 19, 1942.)

5. The Court erred in holding in its order of August 19, 1942 that "The treatment of interest differently from principal is under the record fair and complies with statutory essentials", without giving reasons therefor or citing the record, which holding is contrary to law and to the record.

6. The Court erred in secretly looking up closed records in other cases in his Court and using evidence so obtained as a basis of his decision, which evidence as stated by the Court contradicted facts established in the record i. e. the Court stated coupons were printed and not signed while the evidence showed they had lithographed signatures. (See order of August 19, 1942.)

7. The plan of composition did not comply with the requirements of the Municipal Bankruptcy Act in that:

(a) It permitted holders of bonds and holders of coupons, both creditors of the same class, to be treated differently, and

(b) It provided that the Municipal Debtor might withhold from the plan a part of its assets (designated by the Court "free assets" in order of August 19th, 1942) for the benefit of a favored few and the Court held that this was

not a departure from the plan but was pursuant to the plan and permitted by the Act.

(c) It permitted the payment of unequal amounts to some creditors, merely because they were diligent, and special settlements with others. The Court held such payments and settlements to be permitted by the plan and the Act, notwithstanding the plain language of the Plan and the Act.

(d) It permitted closed settlements to stand unaltered, but reduced partially completed settlements which originally were on substantially the same basis (See order of August 19, 1943).

BASS, BERRY & SIMS,
WYLIE & WARREN,
Attorneys for the American National Bank of Nashville.
By F. A. BERRY,
Of Counsel.

Addresses:
Wylie & Warren,
Hall Building,
St. Petersburg, Fla.

Bass, Berry & Sims,
F. A. Berry,
1000 American Trust Building,
Nashville, Tenn.

1983 On February 11, 1943 Designation of The American National Bank of Nashville of Contents of Record on Appeal was filed in words and figures as follows, to-wit:

DESIGNATION OF CONTENTS OF RECORD ON APPEAL OF THE AMERICAN NATIONAL BANK OF NASHVILLE.

(Caption Omitted.)

On the appeal taken herein by The American National Bank of Nashville, the following portions of the record, proceedings and evidence are directed to be included in the transcript of the record in the above styled cause for use on appeal to the Circuit Court of Appeals for the 5th Judicial Circuit of the United States:

1. Those portions of the Record designated to be included in the Record by the Appellant, Ed. C. Wright, together with the following, which are numbered to supplement and be included with the designations of Appellant Wright, to-wit:

3a. Motion to amend Petition, filed July 13, 1940.

3b. Order amending Petition, filed July 13, 1940.

3c. Motion for Stay Order, filed July 15, 1940.

5a. Proof of Claim of the American National Bank of Nashville, Tennessee, filed August 19, 1940.

6a. Answer and Objections of the American National Bank of Nashville, Tennessee, filed September 10, 1940.

6b. Exceptions to Claim of American National Bank of Nashville, Tennessee, filed October 12, 1940.

7a. Motion to Require Amendment of Petition (American National Bank of Nashville), filed September 10, 1940.

14a. Objections to Claims, filed January 17, 1941.

14b. Objections to Claims, filed January 17, 1941.

14c. Objections to Claims, filed January 20, 1941.

14d. Objections to Claims, filed January 20, 1941.

14e. Petition for Stay Order, filed January 25, 1941.

14f. Stay Order, filed January 25, 1941.

14g. Proof of Claim #352, filed by Joseph W. McCarthy, December 12, 1940.

14h. Answers to Interrogatories by Joseph W. McCarthy, filed January 30, 1941.

14i. Proof of Claim #472, filed by Joseph A. Schantz, July 24, 1940.

14j. Answers to Interrogatories by Joseph A. Schantz, filed January 31, 1941.

14k. Proof of Claim #69, filed by David L. S. and Mercer T. Brewster, July 24, 1940.

14l. Response to Interrogatories by D. L. S. Brewster, filed February 8, 1941.

14m. Answer to Petition for Restraining Order and Return to Rule to Show Cause, filed February 4, 1941.

14n. Motion to Dissolve Injunction, filed February 4, 1941.

14o. Opinion and Order Making Restraining Order of January 25, 1941, permanent, filed February 21, 1941.

14p. Affidavit of Mailing (copies to Creditors), filed February 27, 1941.

15a. Interrogatories propounded by City of Coral Gables, Florida (to American National Bank of Nashville, Tennessee), filed July 3, 1941.

16a. Objections to Interrogatories propounded by City of Coral Gables, Florida, filed July 17, 1941.

16b. Supplemental Objections by American National Bank, filed July 21, 1941.

19a. Answers of the American National Bank of Nashville to Interrogatories propounded by Petitioner, filed before Master August 21, 1941.

22a. Petitioner's Evidentiary Exhibit #49.

23a. Defendant's Evidentiary Exhibit #21.

29a. Objections and Exceptions of American National Bank of Nashville to the Report of the Special Master, filed May 21, 1942.

30a. Stipulation, filed October 27, 1942.

32a. Motion for additional and amended finding of fact and conclusions of law (American National Bank of Nashville), filed November 20, 1942.

32b. Motion for additional and amended finding of fact and conclusions of law (American National Bank of Nashville), filed November 20, 1942.

40a. Notice of Appeal of American National Bank of Nashville, filed December 19, 1942.

42a. Statement of Points on Appeal, filed February .., 1943.

43a. This Designation.

Dated this 5th day of February, 1943.

WYLIE & WARREN,
BASS, BERRY & SIMS,
Attorneys for the American National Bank of Nashville.
By F. A. BERRY,
Of Counsel.

Addresses:
Wylie & Warren,
Hall Building,
St. Petersburg, Florida.

Bass, Berry & Sims,
F. A. Berry,
1000 American Trust Building,
Nashville, Tennessee.

United States of America,
Southern District of Florida, ss.

I, EDWIN R. WILLIAMS, Clerk of the United States District Court, in and for the Southern District of Florida, do hereby certify that the foregoing pages numbered 1 to 1985 inclusive is a true and correct copy of all papers and records according to the Designation of Contents of Record to be included in the Record on Appeal in the case of The City of Coral Gables, Florida, Petitioner, number 1867-M-Bankruptcy.

Whereof, I hereby set my hand and affixed the official seal of this Court, this 15th day of March, A. D. 1943.

EDWIN R. WILLIAMS,
(Seal) Clerk, U. S. District Court,
Southern District of Florida.
By EARLE F. SPRIGG,
Deputy Clerk.

[fol. 1860] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:—

ARGUMENT AND SUBMISSION

Extract from the Minutes of May 26th, 1943

No. 10605

ED. C. WRIGHT, doing business as Ed. C. Wright & Company, Successor to Ed. C. Wright & Company, Inc., et al.,

versus

CITY OF CORAL GABLES, FLORIDA.

On this day this cause was called, and, after argument by Miller Walton, Esq., and F. A. Berry, Esq., for appellants, and Morton B. Adams, Esq., Ira C. Haycock, Esq., and D. H. Redfearn, Esq., for appellee, was submitted to the Court.

[fol. 1861] OPINION OF THE COURT AND CONCURRING OPINION IN PART AND DISSENTING OPINION IN PART BY WALLER, CIRCUIT JUDGE—Filed July 9, 1943

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10605

ED C. WRIGHT, doing business as Ed C. Wright & Company, Successor to Ed C. Wright & Company, Inc., et al., Appellants,

versus

CITY OF CORAL GABLES, FLORIDA, Appellee.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA

(July 9, 1943)

Before Hutcheson, Holmes, and Waller, Circuit Judges.

HUTCHESON, Circuit Judge:

Proceeding under the authority of city ordinance No. 347, adopted March 5, 1940, authorizing its filing, the City on

June 27, 1940, filed a petition in municipal bankruptcy for the avowed purpose of compelling acceptance by a few [fol. 1862] creditors who had not accepted it, and had not been settled with, of a plan which the City by ordinance No. 269 on December 23, 1936, had offered to all its creditors as a voluntary plan, and which had been carried to completion as such in 1937 by the acceptance of more than the 90 per cent the plan required to make it effective.

The claim of the City was that in filing the petition in 1940, the City was but endeavoring to complete the partially completed plan of 1937, and that under the authority of Sec. 83 (j) of the Municipal Bankruptcy Act,[1] as construed in *American National Bank* v. *City of Sanford*, 112 Fed. (2) 435, and *Davis* v. *City of Homestead*, 112 Fed. (2) 438, the City had the right upon the basis of consents procured in 1940 from the holders of its refunding bonds issued and accepted in 1937 under the voluntary plan to compel non-consenting creditors to accept the plan now for then. On June 27th, there were findings that the petition complied with the act of congress as amended and that it had been filed in good faith, and orders, that the petition be filed, that a hearing be had on the matters it presented, and making the plan temporarily operative.

Two creditors, and only two, made substantial and persistent objection. These were Ed. C. Wright & Co., a holder of unrefunded bonds, and The American National Bank of Nashville, Tennessee, a creditor of Wright & Co. and the pledgee, by an arrangement made just before the [fol. 1863] filing of the plan with knowledge that it would be

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[1] "The partial completion or execution of any plan of composition as outlined in any petition filed under the terms of this act (title) by the exchange of new evidences of indebtedness under the plan for evidences of indebtedness covered by the plan, whether such partial completion or execution of such plan of composition occurred before or after the filing of said petition, shall not be construed as limiting or prohibiting the effect of this act (title), and the written consent of the holders of any securities outstanding as the result of any such partial completion or execution of any plan of composition shall be included as consenting creditors to such plan of composition in determining the percentage of securities affected by such plan of composition."

filed and for the purpose of defeating it, of coupons in the amount of $84,852.50, then detached from bonds of Wright & Co. theretofore held in pledge but then delivered to it. Wright & Co. resisted the approval of the plan on several grounds. One was that the petition for composition was not filed in good faith and for the purpose of rescuing the city from an insolvent condition existing when the petition was filed, but merely for the purpose of arbitrarily forcing it to agree to the voluntary plan long since completed and abandoned. Another was that the consents of the holders of refunding bonds could not within the language and purpose of subdivision (j) be properly used against it because the plan under which they hold their bonds was not a partially but a fully completed one. A third was that the consents were obtained and given under representations which deprive them of the character of the good faith assents required under the bankruptcy statute, that is to say, instead of the consents being procured and given because of the city's then insolvency or inability to meet its indebtedness and pursuant to a plan by which those consenting agree in the interest of all to waive or surrender part of their debt or security, these consents were given upon the express assurance of the city that they were but formalities, that their giving would not in any manner affect the rights or interests of those consenting, and that their giving was only for the purpose of forcing the "hold-up" creditors to accept the provisions which the assenting creditors had agreed to under wholly different conditions three years before.[2] While a fourth and fifth

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[2] On Feb. 24, 1940, the City wrote to each holder of bonds or tax participation certificates taken under the voluntary plan a form letter, advising: "You and others representing 94.18% of the City's obligations consented to the refunding and exchanged your bonds for the new refunding securities. • • • The holders of the remaining 3.98%, $326,000.00, of bonds, have not seen fit to cooperate. *The City Commission is not willing to grant to these few non-consenting creditors a better settlement than that which you accepted. Negotiations with these hold-outs having failed to complete the refunding, the City is compelled to avail itself of the Municipal Bankruptcy Act. Municipal bankruptcy proceedings cannot, and will not, change the terms of the refunding bonds or tax participation certificates which you hold. The results*

were that many of the so-called consenters were not those who had consented in 1937 but were those who had since [fol. 1864] purchased the refunding bonds, and that after securing 94 per cent of acceptances in 1937, the City had made so many discriminatory settlements that it was impossible to claim that the original plan was now being, or could be, put into effect. The bank made the same objections and the additional objection that the plan was grossly unfair to it because it admittedly offered much more generous treatment of and provision for the principal of the bonded indebtedness than for interest as evidenced by coupons, and the bank held coupons only.

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will apply only to the unrefunded bonds. • • • We ask that you immediately fill in, execute and return in the preaddressed postal envelope the enclosed preliminary consent and statement upon which the City will prepare and send to you for execution the final consent which will be necessary to enable the City to initiate and support the proceedings. *This consent will not obligate you financially in any way and is merely a ratification of your acceptance of the refunding plan."* Accompanying this letter was a form of consent which, among other things, provided: *"With the understanding that there will be no obligation on my part for the expense of the proceedings and no other financial obligation of any nature and that it will not be necessary to surrender possession of my bonds of the issue of January 1, 1937, I assent to the filing of municipal bankruptcy proceedings as the necessary means of completing the refunding and will sign formal consent thereto when sent to me by the City."* (Emphasis supplied.) Attached to the petition were acceptances in which the signer, stating that he was the owner and holder of refunding bonds listed, dated 1-1-37, "said bonds being outstanding as result of the partial completion or execution of the plan of composition evidenced by ordinance 269 • • • which said plan of composition was readopted by ordinance 347, adopted March 5, 1940, as a plan for the composition of the debts of the City, hereby accepts and consents to the aforesaid plan of composition to be presented by a petition to the United States District Court for the Southern District of Florida for the completion of said plan for the composition of said debts under the aforesaid plan in accordance with Chapt. IX of the Acts of Congress."

There was a reference to a master, a full hearing by him, a finding that the plan was filed in good faith, was fair and ought to be confirmed, and recommendations accordingly. Exceptions to these findings and recommendations were overruled by the court, and the interlocutory or-
[fol. 1865] der from which this appeal comes was entered. In it the court, reciting (1) that as of June 27, 1940, the day the petition was filed, and as of September 22, 1937, the day the plan of settlement was placed in effect by petitioner, the petitioner was insolvent and unable to meet its debts, (2) that the plan was fair, equitable and for the best interests of the creditors and did not discriminate unfairly in favor of any creditor, (3) that it complied with the provisions of law, had been accepted and approved as by law required, (4) that all amounts paid and to be paid by the petitioner for services and expenses in connection with the plan had been fully disclosed and were reasonable, (5) that the offer of the plan and its acceptances were in good faith, (6) that the petitioner was authorized by law to take all necessary action to carry it out, ordered that the plan be approved and confirmed. Among the findings by the master and the district judge were findings that the arrangement for detaching the coupons from the Wright bonds so that the bank could claim to be the holder was made for the purpose of creating a supposed equity in the bank to oppose the plan and not *bona fide* and in due course of business for the purpose of making the bank the real owner and holder thereof as pledgee.

Wright & Co., the Bank, and one Joseph Lea, who files a brief *amicus curiae*, but who in the trial below appeared as attorney for Wright, are here insisting that the case does not come within the evil Subdivision (j) sought to remedy, that it does not present a case where that statute can be justly applied. They point out that the voluntary plan had been accepted in 1937 under an express understanding that bankruptcy would not be resorted to, and that after it was completed by securing acceptance of at least 90 percent, the City could then go about making voluntary and preferential settlements with other creditors. They insist that the plan having been fully completed and many voluntary settlements not at all in accordance with the plan having in the
[fol. 1866] three years following been negotiated and concluded, the City may not go through the pretense of filing a petition in bankruptcy for composition of debts when the

only purpose and effect of it is to use the statute as a club to compel Wright to take settlements less favorable than those the city accorded to other non-consenting creditors.

Of the claim of the bank and the poor mouth it puts up as to its plight in having only coupons and thus being discriminated against in the composition in favor of the holders of the bonds from which the coupons were detached, we make short work. We need only point out, as we did in the case of Roberts,[3] another willing worker for Wright, that proceedings in bankruptcy are ruled by equitable considerations and hard situations deliberately contrived as the result of planning and artifice with Wright for the purpose of blocking by an appeal to the peculiar equity of being an owner of coupons only, a plan, which Wright as owner of the bonds and coupons might not have been able to prevent, would be seen for what it was, not a real but a simulated and synthetic hardship wholly without equitable appeal. In the Roberts case where, detaching coupons from Wright's bonds, Roberts presented the same equity claimed here, we said:

> "His situation is the result of concert with, and attempted artifice in the interest of Wright & Co. to block, by appealing to equity, what they could not legally prevent * * *. Proceedings in bankruptcy are ruled by equitable considerations and the invoked provision of the act, that a plan must not discriminate unfairly in favor of any creditor or claims of creditors, has no application to this case. Compositions of all kinds * * * are grounded on considerations of the purest equity and [fol. 1867] proceedings under statutes authorizing them have always required openness and fairness of dealing. * * * For a court to give effect to the secret contrivances and arrangements evidently existing here * * * would be to disregard and to do violence to all of these considerations."

The bank, in short, has made its own bed. It must lie in it. If it has fallen into a pit, it is one it has itself digged, and it must, for the court will not aid it, extricate itself therefrom.

As to Wright, the matter stands quite differently. Here is no such case as that dealt with in Sanford's case. There

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[3] Roberts vs. Board, 117 Fed. (2) 943.

there was a plan in the process of completion, and the only objection to the voting of the consents was that some of those consenting had, when they consented, already taken refunding bonds. Here the plan, which it is claimed that the City sought by its petition filed in 1940 to put into effect, was not in any sense a partially completed plan, in addition, it was not the plan proposed in 1937. That plan had been completed, not only in the respect that more than the 90 per cent made a prerequisite to its taking effect had accepted and the City had declared it in effect, but in the respect that after 94 percent of the creditors had accepted, the plan was abandoned, and other creditors were dealt with on the basis of voluntary and often quite preferential settlements. It is true that these settlements were not made secretly and that bondholders who had accepted the voluntary plan consented to them. It is true, too, that Wright as to some of his bonds was the beneficiary of one of these settlements. But these facts are without significance here. What is significant is that the City in 1937 completed and thereafter entirely abandoned the voluntary plan it had offered in 1936, and secured the acceptance of in 1937, and that the present proceeding [fol. 1868] is an entirely new proceeding and in no proper sense a completion of that plan. Of the greatest significance, too, in determining that the plan was not filed in the legal good faith the law requires is the fact that in requesting consents of holders of its refunded securities, the City made it plain that the consents were not requested as a part of a plan, devised to protect the city from its then financial involvements, in the abnegations and sacrifices of which all would share. They were requested and were to be used to bludgeon into submission those with whom the City had not been able to make settlements satisfactory to itself. The statutory provision for municipal composition of indebtedness was not intended to operate in this way. Remedial and beneficial as Subdivision (j) was intended to be, and is, when properly applied, it was not intended to, it could not constitutionally, be applied in the way attempted here, for the result of such application would be to deprive the assents of the constitutional base on which their efficacy as consents rests. That base, as pointed out in *Texas Hotel Securities Co.* v. *Waco Develop. Co.*, 87 Fed. (2) 395, *Continental* vs. *Louisiana Oil & Ref. Corp.*, 89 Fed. (2) 333, and *In re: City of West Palm Beach*, 96 Fed. (2) 86, is the identity of interests of those consenting with those compelled by their con-

sents to accept the plan. That is, that made by persons in the same situation as those against whom their votes are counted, they represent a concession and a yielding on the part of the consenting ones equivalent to that required of those non-assenting but compelled to accept. Nothing in the Sanford case departs from or is in conflict with this view. We there recognized that if the plan had been completed, the City could not have used it merely to put pressure upon those who by the consents of others had become better situated to compel them to surrender the benefits which the prior consentings had conferred. All that was held there was that in respect of a partially executed plan which was still in process of completion, it was competent for Congress [fol. 1869] to provide that those who had already given their consent could vote now for then for the completion of the plan. We did not, we could not, hold that where, as here, a plan has been entirely completed and it is sought to revive it under changed conditions for the sole purpose of forcibly scaling the debts of nonassenting creditors, the consents of persons holding refunding securities issued under that plan could be solicited and counted as effective consents under Subdivision (j). The plan was not submitted in good faith, it is not fair to the opposing creditors, the consents of those who had taken the refunding bonds were not, under the circumstances the record discloses, properly voted in its favor. The order appealed from is, therefore, reversed, and the cause is remanded for further and not inconsistent proceedings.

Waller, Circuit Judge, concurring in part and dissenting in part:

The case should be reversed and remanded but not for the reasons stated in the main opinion.

The Special Master and the Court below found as a fact that the plan of composition of debts had not been completed when ninety-odd per cent of the bondholders had accepted refunding bonds. I concur.

The fact that the City, through one Excelsen, made a number of special settlements with creditors, some of which held special rights or equities, renders this case difficult. Some of these were judgment creditors who had secured peremptory writs of mandamus requiring earmarked tax

levies for their payment, and on a number of such judgments partial payments had been made.

[fol. 1870] The plan of the City to make adjustments with funds not devoted to debt service (generally referred to as "free funds"), was known and agreed to by the consenting creditors, and became, and was, an integral part of the plan of composition, whereby the City could, and did, prevent the raising of its tax millage to the point of vanishing returns. The creditors who accepted the refunding bonds are not here complaining of the special settlements or the use of the "free funds" in making special settlements. They doubtless recognized that it was for their best interest and the best interest of the City that the judgments and special levies should be eliminated and that judgments and excessive special levies should be prevented in the future. They doubtless realized that if special further Court-ordered and enforced levies were made the rate of taxation would be so high as to prevent property owners from paying their taxes and thereby lessen the ability of the City to keep up its debt service payments, or to accumulate a sinking fund, or to realize anything out of the Tax Participation Fund. They are not before the Court, asserting discrimination, but they *are* interested in seeing the City placed in sound financial position and able to carry out the agreement which they and the City voluntarily entered into.

Believing that the special settlements idea was a material part of the uncompleted plan, I conclude that it could not be dropped from the plan when the City decided to take advantage of Chapter IX of the Bankruptcy Act and the procedure under Sec. 83 (j) thereof.

If the making of special settlements from "free funds" was a part of the plan before bankruptcy it must still be a part of the plan and the City must, therefore, tender to creditors now as favorable an adjustment as it made to any other creditor, of the same class, in any of its special settlements. In short, if it made a more favorable settlement [fol. 1871] under the Excelsen plan with bondholder A who held no judgments, writs, special levies, rights, or equities, than the settlement now offered to Wright, the plan before the Court would be unfair to Wright. He, being in the same class as A, would be entitled to the same treatment as was accorded to bondholder A.

Sec. 403 (b), Title 11, U. S. C., provides that

> "The judge shall classify creditors according to the nature of their respective claims and interests: Provided, however, that the holders of all claims, regardless of the manner in which they are evidenced, which are payable without preference out of funds derived from the same source or sources shall be of one class."

The "nature of the claim" of a judgment creditor who has procured a levy to be made, and who has had dedicated and appropriated to his benefit such a special, ear-marked levy, and who has received partial payments from such ear-marked levy, is not of the same nature as that of a non-judgment bondholder; and where the judgment creditor is paid off out of "free funds" derived from the sale of City assets he is not paid from "funds derived from the same source" as a bondholder whose claims are payable only from sinking funds derived from general debt service levies and the Tax Participation Fund.

Furthermore, for claims to be in the same class they must be "payable without preference". Under the "first come, first serve" rule in Florida the vigilant creditor who first successfully resorts to mandamus thereby obtains a preference and a priority in available funds. So the judgment creditors, by virtue of their mandamusly-procured ear-marked levies, occupied a preferred status over non-judg- [fol. 1872] ment creditors without special levies, and the two classes of claims are not "payable without preference".

I conclude that although such judgment creditors did not have vested liens, nor vested rights that bankruptcy could not affect, nevertheless, as between them and bondholders who had taken no such steps it appears that: (a) the nature of their claims was different; (b) the source of payment was not the same; (c) they had a preferential right of payment out of the special, ear-marked levies; and (d) they were within the scope of the purpose for which the "free fund" was set up in the plan. From this it seems to follow that such judgment creditors, and those similarly situated, should have been separately classified and dealt with.

Doubtless all other non-assenting creditors could be placed in one other class, where the nature of their claims, their lack of preferential right to payment, and their common source of payment, would be identical, and wherein all

in such class should receive the same treatment as accorded any other similar creditor in the settlement of his claims out of the "free funds". Thus Wright would be entitled to receive for his securities as favorable a price as was paid to any other creditor in his class, provided he can be paid out of free funds or out of the sale of assets now held by the City which were acquired by the expenditure of "free funds".

The Court need not concern itself now over special settlements voluntarily accepted by a creditor before the filing of the petition even if a few of such settlements were not as advantageous to the creditor as other settlements made with creditors of the same class, and particularly where such accepting creditor is not complaining.

[fol. 1873] If the plan was completed in 1937 the Court would be without jurisdiction, otherwise the plan might yet be amended. It seems important, therefore, that the Court should carefully examine, or reexamine, its findings that the plan was fully completed rather than partially completed.

The following considerations seem to sustain the conclusion that the plan was not a fully completed one, or an abandoned one, in 1937, or at any time prior to the filing of the petition herein:

1. Only ninety-odd percent of the bonds were refunded in 1937 and the refunding plan would seem not to have been completed.

2. Negotiations by the City, through Excelsen and others, continued without cessation to the date of the filing of the petition. (Negotiations between the City and Mr. Wright were in progress up to the very time of the filing of the petition in bankruptcy.)

3. The idea of using the "free funds" for the making of special settlements was a part of the plan, known and agreed to by the consenting creditors, and was designed for the purpose of trying to complete the plan, of which the special settlements were a part.

4. The Special Master, after a full hearing of all the facts, found that the plan was not completed prior to the filing of the petition.

5. The District Judge found that it was not a completed plan, and the evidence overwhelmingly supports the findings of the Master and the District Judge to this effect.

6. Counsel for Mr. Wright in at least a dozen places in his brief [1] refers to the voluntary plan as a "partially com-
[fol. 1874] pleted plan" or a "partially executed plan", and I fail to find any earnest contention on the part of counsel that the voluntary plan was a completed one.

I recognize that if the premise of the majority that the voluntary plan was completed before bankruptcy was correct its conclusion would necessarily follow, but since the premise is supported by neither the law nor the facts the conclusion must fall.

If the plan was not completed before bankruptcy, but only partially so, then the lower Court had jurisdiction by virtue of the consents of the bondholders who accepted the refunding plan, particularly when the record wholly fails to show that any of the voting and consenting creditors received preferential treatment through special settlements. I agree that the plan would be unfair to the non-consenting creditors if other creditors, *in the same class*, were given more advantageous treatment by special settlements, or otherwise, than is afforded them by the plan under consideration. But if this is the case, the privilege of amendment of the plan should be allowed.

The case should be reversed and remanded with directions to allow amendments so as to: (a) include as an integral part of the whole plan the plan of special settlements; (b) reclassify the creditors in accordance with the views above set out; and (c) afford to the non-consenting creditors the opportunity to accept a settlement as favorable as the most liberal special settlement heretofore made to any other creditor of the same class.

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[1] Pages 2, 8, 13, 14, 15, 17, 18, 21, 22, 24, 32, and 33, brief of counsel for appellant Wright.

[fol. 1875] JUDGMENT

Extract from the Minutes of July 9th, 1943

No. 10605

ED. C. WRIGHT, Doing Business as ED. C. WRIGHT & COMPANY, Successor to Ed. C. Wright & Company, Inc., et al.,

versus

CITY OF CORAL GABLES, FLORIDA

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the order of the said District Court appealed from in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for further and not inconsistent proceedings;

It is further ordered, adjudged and decreed that the appelle, City of Coral Gables, Florida, be condemned to pay the costs of this cause in this Court.

"Waller, Circuit Judge, concurs in part and dissents in part."

[fol. 1891] ORDER DENYING REHEARING

Extract from the Minutes of August 12, 1943

No. 10605

ED. C. WRIGHT, Doing Business as ED. C. WRIGHT & COMPANY, Successor to Ed. C. Wright & Company, Inc., et al.,

versus

CITY OF CORAL GABLES, FLORIDA

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

"Waller, Circuit Judge, dissents."

[fol. 1892] ORDER STAYING PROCEEDINGS IN THE DISTRICT COURT PENDING APPLICATION FOR WRIT OF CERTIORARI UPON FURNISHING BOND FOR $5,000 TO BE APPROVED BY THE CLERK OF THE LOWER COURT—Filed September 13, 1943.

UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE FIFTH CIRCUIT

No. 10605

ED. C. WRIGHT, Doing Business as ED. C. WRIGHT & COMPANY, Successor to Ed. C. Wright & Company, Inc., et al., Appellants,

vs.

CITY OF CORAL GABLES, FLORIDA, Appellee

Appeals from the District Court of the United States for the Southern District of Florida

Order on Petition for Supersedeas

The petition of the City of Coral Gables, Florida, for a stay order to supersede the operation of the judgment of the Circuit Court of Appeals in this case pending the application for writ of certiorari in the Supreme Court of

the United States and the disposition of the same coming on this day to be heard, and it appearing to the Court after consideration of said petition and after argument of counsel that said petition should be granted, and it having been further made to appear to the Court that a writ of certiorari is in process of preparation and will be filed, and the Court being fully advised in the premises,

It Is Ordered, Adjudged, and Decreed that all further proceedings in the above-styled case in the District Court [fol. 1893] of the United States for the Southern District of Florida be, and the same are hereby, suspended and superseded pending the final determination of the Supreme Court of the United States on said petition for writ of certiorari.

It is further Ordered, Adjudged, and Decreed that this order is to be effective upon the filing of a bond, with good and sufficient security, in the amount of Five Thousand Dollars ($5,000.) to be approved by the Clerk of the District Court of the United States for the Southern District of Florida, Miami Division, conditioned that the petitioner shall prosecute its application for writ of certiorari to effect, and answer all damages and costs if it fails to make its plea good, including just damages for delay, and costs and interest. If said petition for certiorari is filed in the Supreme Court of the United States within twenty-eight days from the date of this order, then this stay order is to continue in force until the final disposition of the case by the Supreme Court.

Done and Ordered in vacation at Tallahassee, Florida, this 11th day of September, 1943.

(Signed) Curtis L. Waller, U. S. Circuit Judge.

[fol. 1894] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 1860 to 1893 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the

opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 10605, wherein Ed. C. Wright, doing business as Ed. C. Wright & Company, successor to Ed. C. Wright & Company, Inc., et al., are appellants, and City of Coral Gables, Florida, is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, Volume I., II., and III., numbered from 1 to 1859 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, this 13th day of September, A. D. 1943.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal.)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 8, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.